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7th SEMESTER BANKING LAW NOTES

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BANKING LAW

Q. Discuss the origin and development of Banking Business in India. Do you think that Indian Banking Business needs more effective reforms? Support your answer with reasons.

Indian Banking System for the last two centuries has seen many developments. An indigenous banking system was being carried out by the businessmen called Sharoffs, Seths, Sahukars, Mahajans, Chettis, etc. since ancient time. They performed the usual functions of lending moneys to traders and craftsmen and sometimes placed funds at the disposal of kings for financing wars. The indigenous bankers could not, however, develop to any considerable extent the system of obtaining deposits from the public, which today is an important function of a bank.

Modern banking in India originated in the last decades of the 18th century. The first banks were The General Bank of India which started in 1786, and the Bank of Hindustan. Thereafter, three presidency banks namely the Bank of Bengal (this bank was originally started in the year 1806 as Bank of Calcutta and then in the year 1809 became the Bank of Bengal) , the Bank of Bombay and the Bank of Madras, were set up. For many years the Presidency banks acted as quasi-central banks. The three banks merged in 1925 to form the Imperial Bank of India. Indian merchants in Calcutta established the Union Bank in 1839, but it failed in 1848 as a consequence of the economic crisis of 1848-49. Bank of Upper India was established in 1863 but failed in 1913.

The Allahabad Bank, established in 1865, is the oldest survived Joint Stock bank in India. Oudh Commercial Bank, established in 1881 in Faizabad, failed in 1958. The next was the Punjab National Bank, established in Lahore in 1895, which is now one of the largest banks in India. The Swadeshi movement inspired local businessmen and political figures to found banks of and for the Indian community during 1906 to 1911. A number of banks established then have survived to the present such as Bank of India, Corporation Bank, Indian Bank, Bank of Baroda, Canara Bank and Central Bank of India. A major landmark in Indian banking history took place in 1934 when a decision was taken to establish 'Reserve Bank of India' which started functioning in 1935. Since then, RBI, as a central bank of the country, has been regulating banking system.

INDIAN BANKING SYSTEM NEED REFORMS

The Indian government's relatively swift decision to implement a bank recapitalization plan in October 2017 was a first step in the right direction. However, it was discovered in February 2018 that one of India's public-sector banks was defrauded of $1.8 billion over the course of seven years. This revelation confirmed what everyone suspected and feared— that the problems of India's banking sector go much deeper than any recapitalization alone will be able to solve.

Unfortunately, most of the recent reform efforts have focused too much on the symptoms of India's banking crises, rather than on the sector's underlying structural and operational weaknesses. For instance, the Reserve Bank of India's (RBI) undertook two previous projects. One was the July 2015 Asset Quality Review (AQR), which facilitated discovery and recognition of non-performing loans (NPL), and the other was the Insolvency and Bankruptcy Code of 2016, which accelerated the resolution of bad loans. The truth is that neither of these approaches corrected the underlying problems with risk controls, management, and supervision at public-sector banks. As a result, India has faced crisis after crisis in its banking sector, with no solution in sight.

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In light of this, India has considered more radical proposals to shake up the banking sector, and many of these are debated *ad nauseam* . For example, observers contend that reducing the government's ownership stake in publicsector banks would reduce conflicts of interest and pressure on banks to lend to politically-desirable projects.

Alternatively, others have suggested that the government should merge some of the smaller public-sector banks to cut costs, centralize talent and best practices, and simplify regulatory oversight. In addition, others have advocated that the government should completely privatize the public-sector banks all at once.

While each of these proposals has merit, it is unlikely that any of these solutions will become feasible in the near term. This is because we have seen almost no progress on implementing any of these ideas due to India's gridlocked political environment. Furthermore, the need to promote financial inclusion through state-directed lending and the complexity of operationalizing radical changes to a large banking sector ensure that the pace of change will be slow. In India's search for practical solutions, leaders must not lose sight of such facts on the ground.

So, where does this leave India's banks? One of the more feasible solutions might be to increase competition in India's banking sector. Market forces can often be more effective than regulatory and political mandates. Fortunately, the RBI has already made some progress in this direction. In August 2016 it started to liberalize the policy for issuance of new bank licenses, dubbed "on tap" licensing. Prior to the introduction of this new policy, India issued new banking licenses only once a decade. But the RBI needs to go a step further. The new licensing policy has not yet lived up to its aims. As of mid-2017, only one firm had applied for a new license. The RBI should consider loosening the policy further to encourage more applicants. For example, it could reduce the minimum equity threshold, remove the requirement that applicants be Indian residents, remove the demand that banks open twenty-five percent of their branches in unbanked areas. Also, the RBI could also reduce the obligation for new banks to adhere to the same priority sector lending targets as all scheduled commercial banks. Further competition in the banking sector would be a crucial market-driven instrument that could force change on an industry that has been averse to reform. First, by introducing new banks into the system, India can reduce the systemic risk that arises from public sector banks' current dominance of total lending. The role of state-directed lending can then be limited to advancing financial inclusion objectives. Second, increased competition would help induce operating reforms in PSBs, because market pressures would force them to compete effectively against new, more nimble banks. Competition would also partially obviate the need for the RBI to dictate operating reforms ham-handedly. Third, issuing licenses to new domestic and foreign banks would bring new talent into the sector, facilitate knowledge transfer, and alleviate the longstanding underlying human capital shortage. Finally, fourth, this policy can likely be implemented with less direct interference from the government. For example, it would be much harder to convince the government to reduce its ownership in PSBs or to privatize the PSBs than to allow new entrants. Of course, this approach is not without challenges. First, given the significant market share of PSBs, it will take time before new banks will be able to make a dent in the market share of PSBs and exert real competitive pressure. To address this lag, the RBI should start by issuing more banking licenses to non-banking financial companies (NBFCs). After NBFCs gain the benefit of deposit insurance, they will be able to reduce their borrowing costs and more rapidly increase lending volumes. Another concern about introducing new, inexperienced banks into a stressed system is that it could exacerbate instability and increase oversight complexity for the RBI. However, there are ways to mitigate this risk from inexperienced new banks. The government should consider expanding access specifically to foreign banks, which currently represent only six percent of all banking assets in India.

Moreover, well-established foreign banks are likely to bring superior operating practices into the market and create spillover benefits (such as knowledge transfer) for domestic banks. Indeed, such knowledge transfer could be facilitated through the formation of new joint ventures between domestic and foreign banks.

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India has a unique window of opportunity to effectuate long-lasting structural change in its banking sector. By increasing the pace of bank licensing and by inducing competition into the banking sector, the RBI can begin the process of much-needed reform while hopefully avoiding political interference. However, if instead, India chooses to rehash policy solutions that merely ameliorate symptoms, it will continue to find itself trapped in a never-ending cycle of banking crises.

Q. Define "Banker" and "Customer". Discuss the relationship between "Banker" and "Customer".

Definition of a 'Banker': *The Banking Regulations Act, 1949* does not define the term 'banker' but defines what banking is. As per ***Section 5(b)*** of the Act, "Banking' means accepting, for the purpose of lending or investment, of deposits of money from the public repayable on demand or otherwise and withdrawable by cheque, draft, order or otherwise."

As per **Section 3** of the ***Negotiable Instruments Act 1881***, the word "banker includes any person acting as banker and any post office savings bank".

According to ***Section 2*** of the ***Bill of Exchange Act, 1882***, 'banker includes a body of persons, whether incorporated or not who carry on the business of banking.'

Who is a 'Customer'?

The term 'customer' of a bank is not defined by law. Ordinarily, a person who has an account in a bank is considered is customer. Banking experts and the legal judgments in the past, however, used to qualify this statement by laying emphasis on the period for which such account had actually been maintained with the bank.

In Sir John Paget's view "to constitute a customer there must be some recognizable course or habit of dealing in the nature of regular banking business." This definition of a customer of a bank lays emphasis on the duration of the dealings between the banker and the customer and is, therefore, called the 'duration theory'. According to this viewpoint a person does not become a customer of the banker on the opening of an account; he must have been accustomed to deal with the banker before he is designated as a customer. The above-mentioned emphasis on the duration of the bank account is now discarded.

According to Dr. Hart, "a customer is one who has an account with a banker or for whom a banker habitually undertakes to act as such." Supporting this viewpoint, the Kerala High Court observed in the case of ***Central Bank of India Ltd. Bombay vs. V. Gopinathan Nair and others (A.I.R.,1979,Kerala 74)***: "Broadly speaking, a customer is a person who has the habit of resorting to the same place or person to do business. So far as banking transactions are concerned he is a person whose money has been accepted on the footing that banker will honour up to the amount standing to his credit, irrespective of his connection being of short or long standing."

'Know Your Customer' Guidelines and Customer: As per 'Know Your Customer' guidelines issued by Reserve Bank of India, customer has been defined as:

a) A person or entity that maintains an account and/or has a business relationship with the bank;

b) One on whose behalf the account is maintained (i.e. the beneficial owner);

c) Beneficiaries of transactions conducted by professional intermediaries, such as Stock Brokers, Chartered

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Accountants, Solicitors etc. as permitted under the law, and

d) Any person or entity connected with a financial transaction, which can pose significant reputational or other risks to the bank, say, a wire transfer or issue of a high value demand draft as a single transaction.

RELATIONSHIP BETWEEN A BANKER AND A CUSTOMER

1. Relationship of Debtor and Creditor: When a customer opens an account with a bank and if the account has a credit balance, then the relationship is that of debtor (banker / bank) and creditor (customer).

In case of savings / fixed deposit / current account (with credit balance), the banker is the debtor, and the customer is the creditor. This is because the banker owes money to the customer. The customer has the right to demand back his money whenever he wants it from the banker, and the banker must repay the balance to the customer.

In case of loan / advance accounts, banker is the creditor, and the customer is the debtor because the customer owes money to the banker. The banker can demand the repayment of loan / advance on the due date, and the customer has to repay the debt.

A customer remains a creditor until there is credit balance in his account with the banker. A customer (creditor) does not get any charge over the assets of the banker (debtor). The customer's status is that of an unsecured creditor of the banker.

The debtor-creditor relationship of banker and customer differs from other commercial debts in the following ways:

1. The creditor (the customer) must demand payment. On his own, the debtor (banker) will not repay the debt. However, in case of fixed deposits, the bank must inform a customer about maturity.

2. The creditor must demand the payment at the right time and place. The depositor or creditor must demand the payment at the branch of the bank, where he has opened the account. However, today, some banks allow payment at all their branches and ATM centres. The depositor must demand the payment at the right time (during the working hours) and on the date of maturity in the case of fixed deposits. Today, banks also allow pre-mature withdrawals.

3. The creditor must make the demand for payment in a proper manner. The demand must be in form of cheques; withdrawal slips, or pay order. Now-a-days, banks allow e-banking, ATM, mobile-banking, etc.

2. Relationship of Pledger and Pledgee: The relationship between customer and banker can be that of Pledger and Pledgee. This happens when customer pledges (promises) certain assets or security with the bank in order to get a loan. In this case, the customer becomes the Pledger, and the bank becomes the Pledgee. Under this agreement, the assets or security will remain with the bank until a customer repays the loan.

3. Relationship of Licensor and Licensee: The relationship between banker and customer can be that of a Licensor and Licensee. This happens when the banker gives a sale deposit locker to the customer. So, the banker will become the Licensor, and the customer will become the Licensee.

4. Relationship of Bailor and Bailee: The relationship between banker and customer can be that of Bailor and Bailee.

1. **Bailment** is a contract for delivering goods by one party to another to be held in trust for a specific period and returned when the purpose is ended.

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2. **Bailor** is the party that delivers property to another.

3. **Bailee** is the party to whom the property is delivered.

So, when a customer gives a sealed box to the bank for safe keeping, the customer became the bailor, and the bank became the bailee.

5. **Relationship of Hypothecator and Hypothecatee:** The relationship between customer and banker can be that of Hypothecator and Hypotheatee. This happens when the customer hypothecates (pledges) certain movable or nonmovable property or assets with the banker in order to get a loan. In this case, the customer became the Hypothecator, and the Banker became the Hypothecatee.

6. **Relationship of Trustee and Beneficiary:** A trustee holds property for the beneficiary, and the profit earned from this property belongs to the beneficiary. If the customer deposits securities or valuables with the banker for safe custody, banker becomes a trustee of his customer. The customer is the beneficiary so the ownership remains with the customer.

7. **Relationship of Agent and Principal:** The banker acts as an agent of the customer (principal) by providing the following agency services:

    - Buying and selling securities on his behalf,
    - Collection of cheques, dividends, bills or promissory notes on his behalf, and
    - Acting as a trustee, attorney, executor, correspondent or representative of a customer.

Banker as an agent performs many other functions such as payment of insurance premium, electricity and gas bills, handling tax problems, etc.

8. **Relationship of Advisor and Client:** When a customer invests in securities, the banker acts as an advisor. The advice can be given officially or unofficially. While giving advice the banker has to take maximum care and caution. Here, the banker is an Advisor, and the customer is a Client.

9. **Other Relationships:** Other miscellaneous banker-customer relationships are as follows:

    - **Obligation to honour cheques** : As long as there is sufficient balance in the account of the customer, the banker must honour all his cheques. The cheques must be complete and in proper order. They must be presented within six months from the date of issue. However, the banker can refuse to honour the cheques only in certain cases.
    - **Secrecy of customer's account** : When a customer opens an account in a bank, the banker must not give information about the customer's account to others.
    - **Banker's right to claim incidental charges** : A banker has a right to charge a commission, interest or other charges for the various services given by him to the customer. For e.g. an overdraft facility.
    - **Law of limitation on bank deposits** : Under the law of limitation, generally, a customer gives up the right to recover the amount due at a banker if he has not operated his account since last 10 years.

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Q. What do you understand by the term "Banking Company"? Discuss the duties of directors of banking company. Write a short note on the Manager of a Banking Company.

According to **Section 5** of the **Banking Regulation Act, 1949**, a banking company means the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise and withdrawn by Cheque, Draft, Order, or otherwise.

In short, a banking company means and includes any company which carries on the business or which transacts the business of banking in India. Therefore, any company which is engaged in trade or manufacture, which accepts deposits of money from the public for the purpose of financing its business only, shall not be deemed to carry on the business of banking.

No company can use as part of its name any of the words bank, banker or banking other than a banking company and, at the same time, no company can carry on business of banking in India unless and until it uses at least one of such words as part of its name.

Licensing of Banking Companies: According to Sec. 22, no company shall carry on banking business in India unless it holds a license issued by the Reserve Bank of India.

<u>If the following conditions are satisfied, the Reserve Bank of India may grant a license:</u>

(i) "That the company is or will be in a position to pay its present and future depositors in full as their claims accrue;

(ii) That the affairs of the company are not being or are not likely to be conducted in a manner detrimental to the interests of its present or future depositor;

(iii) That, in the case of a foreign banking company, the carrying on of a banking business by such company in India will be in the public interest, that the Government or law of the country of its origin does not discriminate against Indian banking companies carrying on business in that country, and that it complies with all the requirements of law applicable to it".

Cancellation of License: The Reserve Bank of India may cancel a license if:

(i) The company ceases to carry on banking business in India;

(ii) The company at any time fails to comply with any of the conditions on which the license was granted; or

(iii) At any time, any of the conditions, on the satisfaction of which the Reserve Bank of India granted the license, has not been fulfilled.

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<u>Business which a Banking Company is allowed to do</u>

Sec. 6 of the Banking Regulation Act, 1949, lays down that the following business may also be carried on by a banking company, in addition to the usual banking business:

(a) Acting as agents for any government or local authority or any other person or persons; the carrying on of agency business of any description including the clearing and forwarding of goods, giving of receipts and discharges and otherwise acting as an attorney on behalf of customers, but excluding the business of a managing agent of a company;

(b) Contracting for public and private loans and negotiating and issuing the same;

(c) Selecting, insuring, guaranteeing, underwriting, participating, in managing and carrying out of any issue, public or private, of state, municipal or other loans or of shares, stock, debentures or debenture stock of any company, corporation or association and of lending of money for the purpose of any such issue;

(d) Carrying on and transacting every kind of guarantee and indemnity business;

(e) Managing, selling and realizing any property which may come into the possession of the company in satisfaction or part satisfaction of any of its claims;

(f) Acquiring or holding and generally dealing with any property, or title or interest in any such property which may form the security or part of the security for any loans or advances or which may be connected with any such security;

(g) Undertaking and executing trusts;

(h) Undertaking the administration of estates as executor, trustee or otherwise;

(i) Establishing and supporting associations, institutions, funds, trusts, and convenience for the benefit of employees, ex-employees, their dependents and the general public;

(j) Acquiring, constructing, maintaining and altering any building or works necessary for the purpose of the banking company;

(k) Selling, improving, managing, developing, exchanging, leasing, mortgaging, disposing-off or turning into account or otherwise dealing with all or any part of the property and rights of the company;

(l) Acquiring and undertaking the whole or any part of the business of any person or company when such business is of a nature enumerated or described in Sec. 6.

(m) Doing such other things as are necessary for the efficient conduct of the above-named business, such as acquisition, construction, alteration etc. of any building or works necessary or convenient for the purpose of the company; and

(n) Any other form' of business which the Central Government may notify in the Official Gazette.

As such, other types of business are prohibited by a banking company.

Prohibited Functions

As per Section 8 of the Banking Regulation Act, 1949, notwithstanding anything contained in section 6 or in any contract, no banking company shall directly or indirectly deal in the buying or selling or bartering of goods, except in

* ADVANCEMENT OF LEARNING * CORPORATE LIFE * PATRIOTISM *

connection with the realisation of security given to or held by it, or engage in any trade, or buy, sell or barter goods for others otherwise than in connection with bills of exchange received for collection or negotiation or with such of its business as is referred to in clause (i) of sub-section (L) of section 6:

Explanation: For the purposes of this section, "goods" mean every kind of movable property, other than actionable claims, stocks, shares, money, bullion and specie, and all instruments referred to in clause (a) of sub-section (L) of section 6

DISPOSAL OF NON-BANKING ASSETS (Section 9)

Notwithstanding anything contained in section 6, no banking company shall hold any immovable property howsoever acquired, except such as is required for its own use, for any period exceeding seven years from the acquisition thereof or from the commencement of this Act, whichever is later or any extension of such period as in this section provided, and such properly shall be disposed of within such period or extended period, as the case may be.

Provided that the Banking Company may within the period of seven years as aforesaid deal or trade in any such property for the purpose of facilitating the disposal thereof.

Provided further that the Reserve Bank may in any particular case extend the aforesaid period of seven years by such period not exceedingfive years where it is satisfied that such extension would be in theinterests of the depositors of the banking company.

CHAIRMAN AND MANAGING DIRECTORS

- Every banking companies in India should be managed by the whole – time chairman. The chairman was appointed from the board of directors on a whole-time basis who was going to exercise all his/her powers subject to the superintendence, control, and directions of the board of directors for the smooth functions of the affairs of that banking company. If the chairman was appointed on the part-time basis, the banking company should get prior approval from the Reserve Bank of India. Every chairman appointed on whole-time basis should hold office for up to 5 years only and also he/she must be eligible for reappointing through reelection. He/she should have special knowledge and practical experience of the working of a banking company and also knowledge about the financial, economic or business administration. He/she might be disqualified from the post of the chairman because if the chairman was a director in any other company or partner in any other company or having the substantial interest in a rival company or engaged in any other business or vocation. The chairman at any time might in writing under his hand addressed to the company about his/her resignation.

- If the chairman appointed for whole-time basis shouldn't be a fit and the right person for that role, after giving the hearing opportunity for both chairman and that banking company, it might require to appoint or elect another person as chairman within the period of 2 months from the date of receipt of that order. If the banking company was failed to appoint or elect another person as chairman, the reserve bank by order might remove that person from the chairman of the board and appoint new person as a chairman of the board for the residue of the period of office of the person in whose place he/she was appointed/elected as a chairman. The chairman who was got the order of removal from that banking company might within 30 days made the appeal to the central government and the decision of the central government and the order of the RBI should be final.

- The reserve bank might order any person as a chairman to under such part-time as honorary work without interfering with his/her duties. If the chairman might become died or resigns or become an incapable person to

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do his/her duties or absent of leave, the banking company might with the approval from the RBI take necessary steps within the period of 4 months.

- The Reserve Bank of India also had all the power to appoint the chairman of any banking company for the period of not exceeding 3 years to hold his/her office in that company.

- The above said provisions were also applicable to the managing director, whole-time director, and director of the banking company. So the chairman, managing director, and director of that banking company shouldn't hold any qualification shares in that banking company.

Board of Directors: The board of directors should have a special knowledge and experience in accountancy, agricultural and rural economy, banking, cooperation, economics, finance, law and small-scale industry. But the board of directors was disqualified if they were the director of any other company or partner in any other company or having the substantial interest in a rival company or engaged in any other business or vocation. Also, no directors hold office for more than 8 years in any one banking company. If the any one director's power was ceased, he/she can't appoint/elect for the period of 4 years. Also, this would lead to reconstitute the board.

Conclusions: All the above provisions were done in section 10 of the banking regulation act 1949. With this provisions, all the managing persons were nominated.

Q. Discuss the services rendered by a Bank to its Customers.

Banks perform certain agency function because they act as agents of their customers in a number of ways. Agency functions are performed for and on behalf of their customers.

1. Accepting Deposit: Accepting deposit from savers or account holders is the primary function of bank. Banks accept deposit from those who can save money, but cannot utilize in profitable sectors. People prefer to deposit their savings in a bank because by doing so, they earn interest.

2. Advancing Of Loans: Banks are profit oriented business organizations. So they have to advance loan to public and generate interest from them as profit. After keeping certain cash reserves, banks provide short-term, mediumterm and **long-term loans** to needy borrowers.

3. Discounting Of Bill Of Exchange: Bill of exchange is a negotiable instrument, which is accepted by the debtor, drawn upon him/her by the creditor and agrees to pay the amount mentioned on maturity. Discounting bill of exchange is another function of modern commercial bank. Under this, banks purchase bill of exchange from holder in discount after making some marginal deduction in the form of commission. The banks pay the deducted value to the holders when traders discount it into bank.

4. Cheque Payment: Banks provide cheque pads to the account holders. Account holders can **draw cheque** upon bank to pay money. Banks pay for cheques of customers after formal verification and official procedures. .

5. Remittance: Remittance is a system, through which cash fund is transferred from one place to another. Banks provide the facilities of remittance to the customers and earn some service charge.

* ADVANCEMENT OF LEARNING * CORPORATE LIFE * PATRIOTISM *

6. **Collection And Payment Of Credit Instruments**: In modern business, different types of credit instruments such as bill of exchange, promissory notes, cheques etc. are used. Banks deal with such instruments. Modern banks collect and pay different types of credit instruments as the representative of the customers.

7. **Foreign Currency Exchange:** Banks deal with foreign currencies. As the requirement of customers, banks exchange foreign currencies with local currencies, which is essential to settle down the dues in the international trade.

8. **Consultancy**: Modern commercial banks are large organizations. They can expand their function to consultancy business. In this function, banks hire financial, legal and market experts, who provide advices to customers in regarding investment, industry, trade, income, tax etc.

9. **Bank Guarantee:** Customers are provided the facility of bank guarantee by modern commercial banks. When customers have to deposit certain fund in governmental offices or courts for specific purpose, bank can present itself as the guarantee for the customer, instead of depositing fund by customers.

Q. Explain the reasons behind nationalization of Banks in India. Discuss the importance of Nationalisation of Banks and state the advantages and disadvantages of Nationalisation of Banks.

After independence the Government of India (GOI) adopted planned economic development for the country (India). Accordingly, five year plans came into existence since 1951. This economic planning basically aimed at social ownership of the means of production. However, commercial banks were in the private sector those days. In 1950-51 there were 430 commercial banks. The Government of India had some social objectives of planning. These commercial banks failed helping the government in attaining these objectives. Thus, the government decided to nationalize 14 major commercial banks on **19th July, 1969**. All commercial banks with a deposit base over Rs.50 crores were nationalized. It was considered that banks were controlled by business houses and thus failed in catering to the credit needs of poor sections such as cottage industry, village industry, farmers, craft men, etc. The second dose of nationalisation came in **April 1980** when banks were nationalized.

Objectives (Reasons) Behind Nationalisation of Banks in India

1. **To reduce monopoly practices:** Initially, a few leading industrial and "business houses had close association with commercial banks. They exploited the bank resources in such a way that the new business units cannot enter in any line of business in competition with these business houses. Nationalisation of banks, thus, prevents the spread of the monopoly enterprise.

2. **Social control was not adequate:** The 'social control' measures of the government did not work well. Some banks did not follow the regulations given under social control. Thus, the nationalisation was necessitated by the failure of social control.

3. **To reduce misuse of savings of general public:** Banks collect savings from the general public. If it is in the hand of private sector, the national interests may be neglected, besides, in Five-Year Plans, the government gives priority to some specified sectors like agriculture, small-industries etc. Thus, nationalisation of banks ensures the availability of resources to the plan-priority sectors.

4. **Greater mobilisation of deposits:** The public sector banks open branches in rural areas where the private sector has failed. Because of such rapid branch expansion there is possibility to mobilise rural savings

* ADVANCEMENT OF LEARNING * CORPORATE LIFE * PATRIOTISM *

5. Advance loan to agriculture sector: If banks fail to assist the agriculture in many ways, agriculture cannot prosper, that too, a country like India where more than 70% of the population depends upon agriculture. Thus, for providing increased finance to agriculture banks have to be nationalised.

6. Balanced Regional development: In a country, certain areas remained backward for lack of financial resource and credit facilities. Private Banks neglected the backward areas because of poor business potential and profit opportunities. Nationalisation helps to provide bank finance in such a way as to achieve balanced inter-regional development and remove regional disparities.

7. Greater control by the Reserve Bank: In a developing country like India there is need for exercising strict control over credit created by banks. If banks are under the control of the Govt., it becomes easy for the Central Bank to bring about coordinated credit control. This necessitated the nationalisation of banks.

8. Greater Stability of banking structure: Nationalised banks are sure to command more confidence with the customers about the safety of their deposits. Besides this, the planned development of nationalised banks will impart greater stability for the banking structure.

The advantages of Nationalization

1. Expansion in rural areas.

2. Enhancement of trust among common masses in banking as govt owned banks were unlikely to fail or fool them.

3. Extension of banking services to common man.

4. Creation and extension of sector specific loans and advances.

5. The direct cash transfer is being implemented and shall be done on even a larger scale after the availability of basic savings account services to poorest of the poor.

6. The trust of the common masses has led to huge deposits in banks. These funds fuel the growth of needful agriculture, services, industries etc.

Demerits or Limitations of Bank Nationalisation in India

Though the nationalisation of commercial banks was undertaken with tall objectives, in many senses it failed in attaining them. In fact it converted many of the banking institutions in the loss making entities. The reasons were obvious lethargic working, lack of accountability, lack of profit motive, political interference, etc. Under this backdrop it is necessary to have a critical look to the whole process of nationalisation in the period after bank nationalisation. The major limitations of the bank nationalisation in India are:-

1. **Inadequate banking facilities** : Even though banks have spread across the country; still many parts of the country are unbanked. Especially in the backward states such as the Uttar Pradesh, Madhya Pradesh, Chhattisgarh and north-eastern states of India.

2. **Limited resources mobilized and allocated** : The resources mobilized after the nationalisation is not sufficient if we consider the needs of the Indian economy. Some times the deposits mobilized are enough but the resource allocation is not as per the expansions.

* ADVANCEMENT OF LEARNING * CORPORATELIFE * PATRIOTISM *

3. **Lowered efficiency and profits** : After nationalisation banks went in the government sector. Many times political forces pressurized them. Banking was not done on a professional and ethical grounds. It resulted into lower efficiency and poor profitability of banks.

4. **Increased expenditure** : Due to huge expansion in a branch network, large staff administrative expenditure, trade union struggle, etc. banks expenditure increased to a dangerous levels.

5. **Political and Administrative Inference** : Many public sector banks badly suffered due to the political interference. It was seen in arranging loan meals. It ultimately resulted in huge non-performing assets (NPA) of these banks and inefficiency.

These are several limitations faced by the banks nationalisation in India. Apart from this there are certain other limitations as well, such as weak infrastructure, poor competitiveness, etc.

But after Economic Reform of 1991, the Indian banking industry has entered into the new horizons of competitiveness, efficiency and productivity. It has made Indian banks more vibrant and professional organizations, removing the bad days of bank nationalisation.

Achievements of Nationalized Banks

A banking revolution occurred in the country during the post-nationalization era. There has been a great change in the thinking and outlook of commercial banks after nationalization. There has been a fundamental change in the lending policies of the nationalized banks. Indian banking has become development-oriented. It has changed from class banking to mass-banking or social banking. This system has improved and progressed appreciably. Various achievements of banks in the post-nationalization period are explained below:

1.Branch Expansion: Initially, the banks were conservative and opened branches mainly in cities and big towns. Branch expansion gained momentum after nationalization of top commercial banks. This expansion was not only in urban areas but also in rural and village areas.

2. Expansion of Bank Deposits: Since nationalization of banks, there has been a substantial growth in the deposits of commercial banks. Thus bank deposits had increased by 200 times. Development of banking habit among people through publicity led to increase in bank deposits.

3. Credit Expansion: The expansion of bank credit has also been more spectacular in the post-bank nationalization period. At present, banks are also meeting the credit requirements of industry, trade and agriculture on a much larger scale than before.

4. Investment in Government Securities: The nationalized banks are expected to provide finance for economic plans of the country through the purchase of government securities. There has been a significant increase in the investment of the banks in government and other approved securities in recent years.

5. Advances to Priority Sectors: An important change after the nationalization of banks is the expansion of advances to the priority sectors. One of the main objectives of nationalization of banks to extend credit facilities to the borrowers in the so far neglected sectors of the economy. To achieve this, the banks formulated various schemes to provide credit to the small borrowers in the priority sectors, like agriculture, small-scale industry, road and water transport, retail trade and small business. The bank lending to priority sector was, however, not uniform in all states.

* ADVANCEMENT OF LEARNING * CORPORATE LIFE * PATRIOTISM *

6. Social Banking - Poverty Alleviation Program: Commercial banks, especially the nationalized banks have been participating in the poverty alleviation Program launched by the government.

7. Differential Interest Scheme: With a view to provide bank credit to the weaker sections of the society at a concessional rate the government introduced the "Differential interest rates scheme" from April 1972. Under this scheme, the public sector banks have been providing loans at 4% rate of interest to the weaker sections of the society.

8. Growing Importance of Small Customers: The importance of small customers to banks has been growing. Most of the deposits in recent years have come from people with small income. Similarly, commercial banks lending to small customers has assumed greater importance.

9. Diversification in Banking: The changes which have been taking place in India since 1969 have necessitated banking companies to give up their conservative and traditional system of banking and take to new and progressive functions.

10. Globalization: The liberalization of the economy, inflow of considerable foreign investments, frequency in exports etc., have introduced an element of globalization in the Indian banking system.

11. Profit making: After nationalization, banks are making profits in addition to achieving economic and social objectives.

12. Safety: The government has given importance to safety of the banks. The RBI exercises tight control over banks and safeguards depositors interest

13. Advances under self-employment scheme: Public sector banks play a significant role in promoting self employment through advances to unemployed through various schemes of the government like IRDP,JGSY, etc.

Q. What is co-operative Banking System? What are its objects? Discuss the development of Co-operative Banking System.

Cooperative banks play an important role in the Indian Financial System, especially at the village level. The growth of Cooperative Movement commenced with the passing of the Act of 1904. A cooperative bank is a cooperative society registered or deemed to have been registered under any State or Central Act. If a cooperative bank is operating in more than one State, the Central Cooperative Societies Act is applicable. In other cases the State laws are applicable. Apart from various other laws like the Banking Laws (Application to Co-operative Societies) Act, 1965 and Banking Regulation (Amendment) and Miscellaneous Provisions Act, 2004, the provisions of the RBI Act, 1934 and the BR Act, 1949 would also be applicable for governing the banking activities.

These cooperative banks cater to the needs of agriculture, retail trade, small and medium industry and self employed businessmen usually in urban, semi urban and rural areas. In case of co-operative banks, the shareholders should be members of the co-operative banks. The share linkage to borrowing is a distinctive feature of a co-operative bank. Rural cooperative sector in India plays a vital role in fulfilling the credit requirements of rural agricultural sector of India. At recent times, the rural credit flow through rural cooperative sector has risen substantially in order to keep pace with the growing demand for credit in the rural parts of India. The Cooperative rural Credit Structure in our country are of following types:

* ADVANCEMENT OF LEARNING * CORPORATE LIFE * PATRIOTISM *

1. Short Term Agricultural Credit institutions: The short term credit structure consists of the Primary Agricultural Credit Societies at the base level, which are affiliated at the district level into the District Central Cooperative bank and further into the State Cooperative Bank at the State level. Being federal structures, the membership of the DCCB comprises all the affiliated PACS and other functional societies and for the Scheduled Commercial Bank, the members are the affiliated DCCBs.

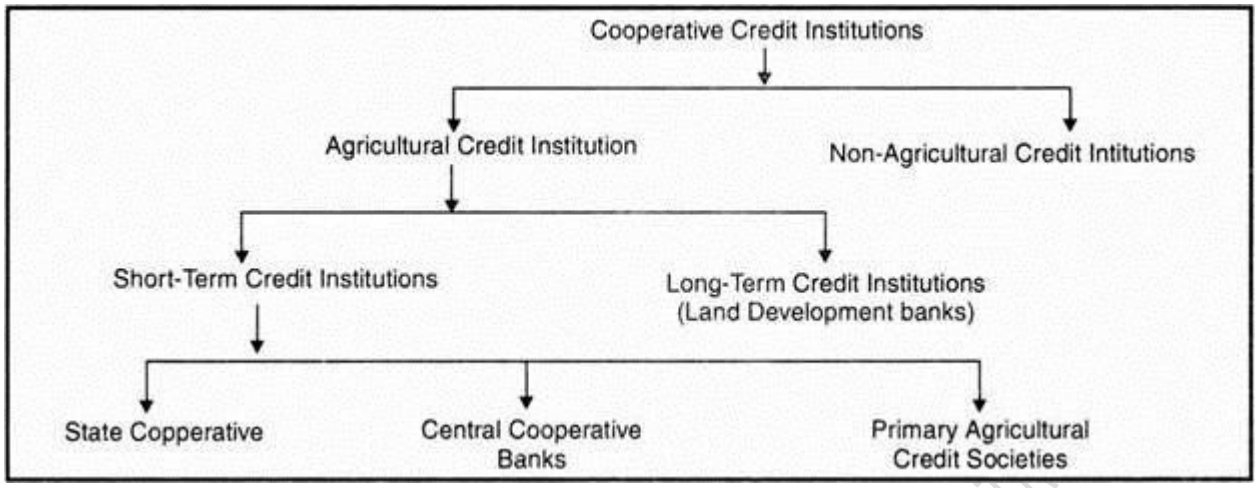
The DCCB being the middle tier of the Cooperative Credit Structure, is functionally positioned to deal with the concerns of both the upper and lower tiers. This very often puts the DCCB in a position of balancing competing concerns. While the Scheduled Commercial Bank may managing District Central Cooperative wish the DCCB to prioritize its task in a particular manner, the PACs may have their own demands on the DCCB. Balancing these competing concerns could often be a dilemma for the DCCBs.

There are 30 State Cooperative Banks. These banks support and guide 372 District Central Cooperative Banks (DCCBs) in India which have 13478 branches as on March, 2013. These DCCBs are providing finance to more than 35 lakhs farmers through about 1.15 lacs Primary Agricultural Cooperative Societies (PACS).

2. Long Term Agricultural Credit Institutions: The long term cooperative credit structure consists of the State Cooperative Agriculture & Rural Development Banks (SCARDBs) and Primary Cooperative Agriculture & Rural Development Banks (PCARDBs) which are affiliated to the SCARDBs. The total No. of SCARDB's are 19; of which 10 have Federal Structure, 7 have Unitary Structure and 2 have Mixed Structure (i.e. operating through PCARDBs as well as its own branches). Loans are given to members on the mortgages of their land usually up to 50% of their value in some states or up to 30 times the land revenue payable in other states, duly taking into account their need and repayment capacity.

3. Urban Cooperative Banks: The term Urban Cooperative Banks (UCBs), although not formally defined, refers to the primary cooperative banks located in urban and semi-urban areas. These banks, until 1996, were allowed to lend money only to non-agricultural purposes. This distinction remains today. These banks have traditionally been around communities, localities working out in essence, loans to small borrowers and businesses. Today their scope of operation has expanded considerably. The urban co-operative banks can spread operations to other States and such banks are called as multi state cooperative banks. They are governed by the Banking Regulations Act 1949 and Banking Laws (Cooperative Societies) Act, 1965. The total number of UCBs stood at 1,618 as on 31st March 2012. Scheduled UCBs are banks included in the Second Schedule of the RBI Act, 1934 and include banks that have paid-up capital and reserves of not less than `5 lakhs and carry out their business in the interest of depositors to the satisfaction of the Reserve Bank.

* ADVANCEMENT OF LEARNING * CORPORATE LIFE * PATRIOTISM *



Importance of Cooperative Banks: The cooperative banking system has to play a critical role in promoting rural finance and is specially suited to Indian conditions.

Advantages of cooperative credit institutions

I. Alternative Credit Source: The main objective of cooperative credit movement is to provide an effective alternative to the traditional defective credit system of the village money lender. The cooperative banks tend to protect the rural population from the clutches of money lenders. The money lenders have so far dominated the rural areas and have been exploiting the poor people by charging very high rates of interest and manipulating accounts.

II. Cheap Rural Credit: Cooperative credit system has cheapened the rural credit both directly as well as indirectly: (a) Directly, because the cooperative societies charge comparatively low interest rates, and

(b) Indirectly, because the presence of cooperative societies as an alternative agency has broken money lender's monopoly, thereby enforcing him to reduce the rate of interest.

III. Productive Borrowing: An important benefit of cooperative credit system is to bring a change in the nature of loans. Previously the cultivators used to borrow for consumption and other unproductive purposes. But, now, they mostly borrow for productive purposes. Cooperative societies discourage unproductive borrowing.

IV. Encouragement to Saving and Investment: Cooperative credit movement has encouraged saving and investment by developing the habits of thrift among the agriculturists. Instead of hoarding money the rural people tend to deposit their savings in the cooperative or other banking institutions.

V. Improvement in Farming Methods: Cooperative societies have also greatly helped in the introduction of better agricultural methods. Cooperative credit is available for purchasing improved seeds, chemical fertilizers, modern implements, etc. The marketing and processing societies have helped the members to purchase their inputs cheaply and sell their produce at good prices.

VI. Role of Cooperative Banks before 1969: Till the nationalisation of major commercial banks in 1969, cooperative societies were practically the only institutional sources of rural credit. Commercial banks and other financial institutions hardly provided any credit for agricultural and other rural activities. Cooperative credit tothe agriculturists as a percentage of total agricultural credit increased from 3.1 per cent in 1951-52 to 15.5 per cent in 1961-62 and further to 22.7 per cent in 1970-71.

* ADVANCEMENT OF LEARNING * CORPORATE LIFE * PATH

On the other hand, the agricultural credit provided by the commercial banks as a percentage of total agricultural credit remained almost negligible and fell from 0.9 percent in 1951-52 to 0.6 percent in 1961-62 and then rose to 4 per cent in 1970-71.

VII. Role of Cooperative Banks after 1969: After the nationalisation of commercial banks in 1969, the government has adopted a multi-agency approach. Under this approach, both cooperative banks and commercial banks (including regional rural banks) are being developed to finance the rural sector.

But, this new approach also recognised the prime role to be played by the cooperative credit institutions in financing rural areas because of the following reasons:

(a) Co-operative credit societies are best suited to the socio-economic conditions of the Indian villages.

(b) A vast network of the cooperative credit societies has been built over the years throughout the length and breadth of the country. This network can neither be duplicated nor be surpassed easily.

(c) The cooperative institutions have developed intimate knowledge of the local conditions and problems of rural areas.

VIII. Suitable Federal Structure of Cooperative Banking System: Cooperative banking system has a federal structure with- (a) primary agricultural credit societies at the village level, (b) higher financing agencies in the form of central cooperative and state cooperative banks, (c) land development banks for providing long- term credit for agriculture. Such a banking structure is essential and particularly suited for effectively meeting the financial requirements of the vast rural areas of the country.

Considering the great importance of cooperative banks, particularly in the rural areas, it is not surprising that every committee or commission, that has examined the working of the cooperative banking system in India, has expressed the common view that "cooperation remains the best hope of rural India."

Weaknesses of Cooperative Banking

Various committees, commissions and individual studies that have reviewed the working of the cooperative banking system in India have pointed out a number of weaknesses of the system and have made suggestions to improve the system.

I. General Weaknesses of Primary Credit Societies: Organisational and financial limitations of the primary credit societies considerably reduce their ability to provide adequate credit to the rural population.

The All India Rural Credit Review Committee pointed out the following weaknesses of the primary credit societies:

(a) Cooperative credit still constitutes a small proportion of the total borrowings of the farmers,

(b) Needs of tenants and small farmers are not fully met.

(c) More primary credit societies are financially weak and are unable to meet the production-oriented credit needs,

(d) Overdues are increasing alarmingly at all levels,

(e) Primary credit societies have not been able to provide adequate and timely credit to the borrowing farmers.

ADVANCEMENT OF LEARNING * CORPORATE LIFE * PATRIOTISM

II. Inadequate Coverage: Despite the fact that the cooperatives have now covered almost all the rural areas of the country, its rural household membership is only about 45 per cent. Thus, 55 per cent of rural households are still not covered under the cooperative credit system.

In fact, the borrowing membership of the primary credit societies is significantly low and is restricted to a few states like Maharashtra, Gujrat, Punjab, Haryana, Tamil Nadu and to relatively rich land owners.

Criteria of determining borrowing membership include:

(a) Borrowing members as a proportion of rural households, (b) The

average amount of loan issued per borrowing member, and

(c) The proportion of loans going to weaker sections.

The banking Commission 1972 has brought out the following reasons for the low borrowing membership cooperative societies:

(a) Inability of the people to provide the prescribed security;

(b) Lack of up-to-date land records;

(c) Ineligibility of certain purposes for loans;

(d) Inadequacy of prescribed credit limits;

(e) Onerous conditions prescribed for loans such as share capital contribution at 10 or 20 per cent of loans outstanding and compulsory saving deposits; and

(f) Default of members to repay loans.

III. Inefficient Societies: In spite of the fact that the primary agricultural credit societies in most of the states have been reorganised into viable units, their loaning business has not improved. As the Seventh Plan has observed that out of 94089 primary agricultural credit societies in the country in 1982-83, only 66000 societies had full time paid secretaries. About 34000 societies were running at loss.

IV. Problem of Overdues: A serious problem of the cooperative credit is the overdue loans of the cooperative institutions which have been continuously increasing over the years. In 1991-92, percentage of overdues to demand at the level of land development banks was 57, at the level of central cooperative banks was 41 and at the level of primary agricultural credit societies was 39.

The overdues in the short-term credit structure are most alarming in North-Eastern States. In the long-term loaning sector, the problem of overdues has almost crippled the land development banks in 9 states, viz., Maharashtra, Gujarat, Madhya Pradesh, Bihar, Karnataka, Assam, West Bengal, Orissa and Tamil Nadu.

Large amounts of overdues restrict the recycling of the funds and adversely affect the lending and borrowing capacity of the cooperative societies.

V. Regional Disparities: There have been large regional disparities in the distribution of cooperative credit. According to the Seventh Plan, the eight states of Andhra Pradesh, Gujarat, Haryana, Kerala, Madhya Pradesh,

* ADVANCEMENT OF LEARNING * CORPORATELIFE * PATRIOTISM *

Maharashtra, Punjab and Rajasthan account for about 80 per cent of the total credit disbursed. The per hectare short-term credit disbursed varied from Rs. 4 in Assam to Rs. 718 in Kerala.

VI. Benefits to Big Land Owners: Most of the benefits from the cooperatives have been covered by the big land owners because of their strong socio-economic position. For instance, in 1984-85 the farmers having holdings less than two hectares got only 38.8 per cent of the total loans granted by the primary agricultural credit societies, whereas the land owners with holdings of more than 2 hectare received 55 per cent. The share of the poorest rural population (i.e. tenants, share croppers and landless labours) was only 6.2 per cent.

VII. Lack of Other Facilities: Besides the provision of adequate and timely credit, the small and marginal farmers also need other facilities in the form of supply of inputs (i.e., better seeds, fertilisers, pesticides, etc), extension and marketing services.

These facilities will enable them to utilise the borrowed credit in a proper way. Therefore, the credit societies should be reorganised into multi-purposes cooperatives.

Reserve Bank and Cooperative Banking

Strengthening the cooperative credit movement has been the Reserve Bank of India's special responsibility ever since its establishment in 1935.

The following are the various measures undertaken by the Reserve Bank to develop cooperative banking system and to promote cooperative finance in the country:

1. Agricultural Credit Department: The Reserve Bank has a separate Agricultural Credit Department whose functions are:

(i) To maintain an expert staff to study all questions of agricultural credit and be available for consolation by the central and state governments, state cooperative banks and other banking organisations; and

(ii) To coordinate the operations of the Reserve Bank in connection with agricultural credit and relations with the state cooperative banks and other institutions engaged in the business of agricultural credit.

2. All-India Rural Credit Survey: The Reserve Bank's real role in the cooperative credit movement started with the appointment of All-India Rural Credit Survey Committee in 1951. The objective of this Committee was to study the problems of rural credit and explore possibilities of expanding agricultural credit through cooperative credit system.

The committee submitted its report in December 1954 which highlighted the vital importance of cooperative rural credit.

The Committee found that while private credit agencies, i.e., money lenders and traders supply 70 per cent of the rural credit, the cooperative societies provided only 3 per cent of the total borrowed amount.

The Committee observed that the rural credit in India fell short of the right quantity, was not of right type, did not serve the right purpose, and often fail to go to the right people. Regarding the future of cooperative credit movement the committee said, "cooperation had failed, but cooperation must succeed."

* ADVANCEMENT OF LEARNING * CORPORATE LIFE * PATRIOTISM *

3. Integrated Scheme of Rural Credit: For the success of cooperative credit movement, the Survey Committee suggested an integrated scheme of rural credit based on the following fundamental principles- (a) state partnership in cooperative credit institutions; (b) full coordination between credit and other agricultural activities, particularly, marketing and processing; and (c) administration through adequately trained and efficient personnel, responsive to the needs of the rural population.

4. Provision of Finance: In pursuance of the recommendations of the Survey Committee and the later committees like the Committee on Cooperative Credit (1960), the Reserve Bank has activity helped the cooperative system to expand rural credit. The Reserve Bank does not provide finance directly to the agriculturists, but only through cooperative sector.

5. Setting Up of Funds: To meet its financial obligations, the Reserve Bank set up two national funds in 1956, i.e., the National Agricultural Credit (Long-Term Operations) Funds, and the National Agricultural Credit (Stabilisation) Fund.

The Purpose of the Long-Term Operations Funds was- (a) to make long- term loans available to state governments to enable them to subscribe the share capital of cooperative credit institutions; (b) to make medium-term loans to state cooperative banks for agricultural purposes; (c) to make long-term loans to the central land mortgage banks against the guarantee of the state government; and (d) to purchase debentures of central land mortgage banks against the guarantee of state government. The Stabilisation Fund helps the state cooperative banks to convert their short-term loans into medium-term loans in cases of draught, famine or other calamities.

6. Strengthening of Cooperative Banking Structure: With a view to strengthen cooperative banking structure and promote cooperative credit, the Reserve Bank undertakes the following measures:

(i) It pays special attention towards rehabilitating and revitalising the weaker cooperative units.

(ii) It makes arrangements for maintaining the flow of cooperative credit by involving commercial banks to finance the primary agricultural societies.

(iii) It makes efforts in improving the lending policies and operational efficiency of cooperative credit institutions.

(iv) It provides financial accommodation to cooperative credit institutions.

(v) It conducts special training courses at the Cooperative Bankers' Training Colleges for the personnel of state, central and urban banks.

* ADVANCEMENT OF LEARNING * CORPORATE LIFE * PATRIOTISM *

Q. Write the differences between Commercial Banks and Co-operative Banks.

Banks can be described as the financial intermediary, amidst the borrowers and depositors and provides banking services to the customers. **Commercial bank** is a bank that is formed for the commercial purpose and hence its primary aim to earn profit from the banking business.

Commercial Bank: Commercial bank refers to the banking company, which is established to serve individuals, organisations, and businesses. It is a financial institution, which is authorised to accept deposits from the general

public and grant credit to them. They are governed by the Banking Regulation Act, 1949 and supervised by the Reserve Bank of India.

Commercial Banks provide short-term, medium-term, and long-term finance to the public. However, it usually prefers to make short-term funding. There are a variety of products offered by the banks, to its customers such as:

- Deposit accounts like fixed deposit, recurring deposit, savings account, current account, etc.
- Loans such as auto loan, home loan and so on.
- ATM services
- Credit and debit card facility.
- Acts as an agent, for the collection of cheques, bills of exchange.
- Safeguards the property and wealth of persons.
- Merchant banking
- Trade financing
- Transfer of money.

Cooperative Bank: Cooperative Banks are the financial institutions that are owned and run by their customers and operates on the principle of one person one vote. The bank is governed by both banking and cooperative legislation, as they are registered under the Cooperative Society Act, 1965 and regulated by National Bank for Agriculture and Rural Development (NABARD) & Reserve Bank of India (RBI). They operate in both rural as well as urban areas and provide credit to borrowers and businesses.

Cooperative Banks offer a range of services like accepting deposits and granting loans to the members and even non-members. The members are the owners and customers of the bank at the same time. The bank offers services like deposit accounts such as savings and current account, safe keeping of valuables (locker facility), loan and mortgage facility to the customers.

<u>The major differences between commercial and cooperative banks are indicated below:</u>

1. A bank established to provide banking services to the individuals and businesses is called Commercial Bank. A cooperative bank is a bank that provides financing to agriculturists, rural industries and to trade and industry of urban areas (but up to a limited extent).
2. A commercial bank is incorporated under Banking Regulation Act, 1949. Conversely, a cooperative bank is registered under the Cooperative Societies Act, 1965.
3. The area of operation of a commercial bank is comparatively larger than a cooperative bank, as cooperative banks are confined to a limited area only while commercial banks even have their branches overseas.
4. Commercial banks are joint stock companies, incorporated as a banking company that operates for the profit motive. As opposed to Cooperative banks, which are cooperative organisations, that works for service motive.

* ADVANCEMENT OF LEARNING * CORPORATELIFE * PATRIOTISM *

5. The borrowers of commercial banks are only account holders; they do not have any voting power. Unlike Cooperative banks, the borrowers are members that influence the credit policy by voting power.

6. Commercial bank's primary function is to accept deposits from the public and grants loans to individuals and businesses. In contrast to the cooperative bank, whose primary purpose is to accept deposits from members and public, and grant loans to farmers and small businessmen.

7. Commercial banks offer an array of products to its customers, whereas there are limited products provided by the commercial bank to its members and public.

8. The commercial bank's interest rate on deposits is comparatively lesser than the cooperative bank.

Conclusion: The bank, which operates for taking deposits from and making loans to the public is a commercial bank. On the other hand, cooperative banks are mainly established to provide financial support to small businessmen and farmers at the low rate of interest. The big difference between these two terms is that while the network of former is very large whereas the network of the latter is confined to a limited area only.

Q. What do you understand by scheduled Bank and Non-scheduled Bank in India?

Banks implies the financial institution that takes public deposits and extends credit to those who need it. They are a substantial part of the financial system, which assists in the overall economic development. These are broadly classified as scheduled and non-scheduled banks in India regulated under the Banking Regulation Act, 1949, wherein **scheduled banks** include all the commercial banks like nationalised, foreign, development, cooperative and regional rural banks.

On the other extreme, **non-scheduled banks** are the banks that do not adhere to the norms prescribed by the Reserve Bank of India (RBI). In this article excerpt, you can find out all the relevant differences between scheduled and non-scheduled banks in India.

Scheduled Bank: Scheduled Banks as the name suggest are the banks, which are accounted in the Second Schedule of the Reserve Bank of India (RBI) Act, 1934. To qualify as a scheduled bank, the bank should conform to the following conditions:

1. The total minimum value of paid up capital and reserve must be of Rs. 25 lacs.

2. The bank requires to satisfy the central bank that its affairs are not carried out in a way that causes harm to the interest of the depositors.

3. The bank needs to be a corporation rather than a sole-proprietorship or partnership firm.

Scheduled banks enjoy certain rights such as:

- Right to receive refinance facility from the apex bank
- Entitled for currency chest facility.
- Right to become members of clearing house

* ADVANCEMENT OF LEARNING * CORPORATE LIFE * PATRIOTISM *

However, they are required to fulfil certain obligations like maintenance of an average daily balance of CRR (Cash Reserve Ratio) with the central bank at the rates specified by it. Add to that; these banks need to submit returns at regular intervals, to the central bank subject to the rules of Reserve Bank of India Act, 1934 and Banking Regulation Act, 1949.

Non-Scheduled Bank: Non-Scheduled Bank refers to the banks which are not listed in the Second Schedule of Reserve Bank of India.

In finer terms, the banks which do not comply with the provisions specified by the central bank, within the meaning of the Reserve Bank of India Act, 1934, or as per specific functions, etc. or as per the judgement of the RBI, are not able to serve and protect the depositor's interest, are known as non-scheduled banks.

Non-Scheduled Banks are also required to maintain the cash reserve requirement, not with the RBI, but with themselves. These are local area banks.

The difference between scheduled and non-scheduled banks can be drawn clearly on the following premises:

1. A banking corporation whose paid up capital is Rs. 25 lacs or more and does not harm the interest of the depositors, is called as Scheduled bank. Unlike, non-scheduled banks are the banks which are not capable of complying with the provision of RBI, for scheduled banks.

2. Scheduled banks are the ones covered in the second schedule of the Reserve Bank, whereas nonscheduled banks are the banks that are not covered in the second schedule of the Reserve Bank.

3. Scheduled Banks need to maintain cash reserves with RBI, at the rates prescribed by it. On the other hand, Non-Scheduled Bank also needs to keep cash reserves, but with themselves only.

4. Scheduled banks are entitled to borrow money from the central bank for regular banking purposes. Conversely, non-scheduled banks are not entitled to borrow money from the central bank for regular banking purposes. Nevertheless, under abnormal conditions, they can request the central bank for accommodation.

5. Scheduled banks must submit the periodic returns to the Reserve bank of India. As against, there is no such requirement of submission of periodic returns to the central bank, in case of non-scheduled banks.

6. Scheduled banks have the right to become the member in clearing house, while no such facility is allowed to non-scheduled banks.

Conclusion: When it comes to privileges, scheduled banks is ahead of non-scheduled banks. Scheduled banks get remittances through the offices of the Reserve Bank of India and its agents, for free or at concessional rates. Moreover, borrowing facilities by Central Bank on the submission of the documents. Such facilities are not provided to the non-scheduled banks.

* ADVANCEMENT OF LEARNING * CORPORATE LIFE * PATRIOTISM *

Q. What are the functions of the State Bank of India?

Establishment of State Bank of India: The State Bank of India is the biggest commercial bank and holds a special position in the modern commercial banking system in India. It came into existence on July 1, 1955 after the

nationalisation of Imperial Bank of India. The Imperial Bank of India was established in 1921 by amalgamating the three Presidency Banks of Madras, Bombay and Bengal.

Until the establishment of the Reserve Bank of India in 1935, the Imperial Bank of India, in addition to its normal commercial banking functions had been performing certain central banking functions. It used to act as the banker to the government, as banker's bank and as the clearing house.

After the establishment of the Reserve Bank of India, the Imperial Bank of India left its central banking functions, but continued to serve as the agent of the Reserve Bank in the areas where the latter did not have its branches. In 1955, on the recommendations of the Rural Credit Survey Committee, the Imperial Bank of India was nationalised and renamed as the State Bank of India through the State Bank of India Act 1955.

Organisation of State Bank of India

The organisation of the State Bank of India can be discussed under the following heads:

i. Capital: The state Bank of India has an authorised capital of Rs. 20 crore which has been divided into 20 lakh shares of Rs. 100 each. The issued capital of the State Bank is Rs. 5.6 crore. The shares of the State Bank are held by the Reserve Bank, insurance companies and the general public. At the end of March 2001, the paid-up capital and the reserves of the State Bank were Rs. 13461 crore.

ii. Management: The management of the State Bank of India is under the control of a Central Board of Directors consisting of 20 members.

The break-up of the Central Board is as given below:

(a) A Chairman and a Vice-Chairman are to be appointed by the Central Government in consultation with Reserve Bank.

(b) Two Managing Directors are to be appointed by the Central Board with the approval of the Central Government,

(c) Six directors are to be elected by the private shareholders.

(d) Eight directors are to be nominated by the Central Government in consultation with the Reserve Bank to represent territorial and economic interests. Not less than two of them should have special knowledge in the working of cooperative institutions and of the rural economy. (e) One director is to be nominated by the Central Government,

(f) One director is to be nominated by the Reserve Bank.

iii. Subsidiary Banks: Through the State Bank of India (Subsidiary Banks) Act, 1959, major state- associated banks were converted into subsidiary banks of State Bank of India.

At present, there are seven subsidiary banks of the State Bank of India:

(a) The State Bank of Bikaner and Jaipur;

(b) The State Bank of Hyderabad;

* ADVANCEMENT OF LEARNING * CORPORATE LIFE * PATRIOTISM *

(c) The State Bank of Mysore;

(d) The State Bank of Patiala;

(e) The State Bank of Saurashtra; (f) The State Bank of Travancore; and

(g) The State Bank of Indore.

The State Bank of India holds not less than 55 per cent of the issued capital of each subsidiary bank.

OBJECTIVES AND FUNCTIONS OF STATE BANK OF INDIA

The State Bank of India has been established to operate on the normal commercial principles, with the only difference that, unlike other commercial banks in the country, it takes into consideration and responds in a progressively liberal manner the financial requirements of cooperative institutions and small scale industries, particularly in the rural areas of the country.

The main objectives of the State Bank are:

(i) To act in accordance with the broad economic policies of the government;

(ii) To encourage and mobilise savings by opening branches in rural and semi-urban areas and to promote rural credit;

(iii) To establish government partnership in the provision of cooperative credit;

(iv) To extend financial help for the establishment of licensed warehouses and cooperative marketing societies;

(v) To provide financial help to the small scale and cottage industries;

(vi) To provide remittance facilities to the banking institutions.

The State Bank of India acts as an agent of the Reserve Bank in all those places where the latter does not have its branches.

As an agent of the Reserve Bank, the State Bank performs the following functions:

(i) It acts as the government's bank, i.e., it collects money and makes payments on behalf of the government and manages public debt.

(ii) It acts as the bankers' bank. It receives deposits from and gives loans to commercial banks. It also acts as the clearing house for the commercial banks, rediscounts the bills of exchange of the commercial banks and provides remittance facilities to the commercial banks.

Ordinary Banking Functions: The State Bank of India performs all kinds of commercial banking functions:

(i) It receives deposits from the public.

(ii) It gives loans and advances against eligible securities including goods, bills of exchange, promissory notes, fully paid shares of companies, immovable property or documents of title, debentures, etc.

* ADVANCEMENT OF LEARNING * CORPORATE LIFE * PATRIOTISM *

(iii) It invests its surplus funds in government securities, railway securities and securities of corporations and treasury bills.

4. Other Functions: The State Bank of India also performs the following other functions:

(i) It buys and sells gold and silver.

(ii) It acts as agent of cooperative banks.

(iii) It underwrites issues of stocks, shares, debentures, and other securities in which it is authorised to invest funds.

(iv) It administers, singly or jointly, estates for any purpose as executor, trustee or otherwise.

(v) It draws bills of exchange and grants letters of credit payable out of India.

(vi) It buys bills of exchange payable out of India with the approval of the Reserve Bank; it subscribes buys, acquires, holds and sells shares in the capital of banking companies.

5. Prohibited Functions: The State Bank of India has been prohibited from doing certain businesses by the State Bank of India Act:

(i) The State Bank cannot grant loans against stocks and shares for a period more than six months.

(ii) It can purchase no immovable property other than its own offices.

(iii) It can neither rediscount nor offer loans against the security of exchange bills whose maturity period exceeds six months.

(iv) It cannot rediscount bills which do not carry at least two good signatures.

(v) It can neither discount bills nor grant credit to individuals or firms above the sanctioned limit.

Conclusion: The State Bank of India has been progressing well in the right direction. It has made remarkable achievements in the fields of expanding banking facilities in the rural and semi- urban areas, and providing financial help to agriculture, cooperative institutions and small scale industries.

Q. Discuss the power and functions of the RBI as the Central Bank of India. Write a note on the relationship between the Govt. and Reserve Bank of India towards maintaining economic growth in India.

The Imperial Bank of India, which emerged as consequence of the amalgamation of three Presidency Banks of Bengal, Bombay and Madras in 1921, assumed certain central banking functions except currency management. The control of currency management continued to be with the Government of India in order to ensure that the central banking entity did not appropriate powers greater than those mandated by the political authority. The Reserve Bank of India Act was placed on the statute book on March 6, 1934. The RBI commenced operations on April 1, 1935 and was nationalized on January 1, 1949. The head office of the Bank is in Mumbai and its executive head is called the Governor.

* ADVANCEMENT OF LEARNING* CORPORATELIFE * PATRIOTISM*

The objective of establishing the RBI, as stated in the preamble to the RBI Act 1934, was to "regulate the issue of bank notes and the keeping of the reserves with a view to securing monetary stability in India and generally to operate the currency and credit system of the country to its advantage." The Bank's functions as laid down in the statutes were : (a) issue of currency (b) banker to Government; and (c) banker to other banks. Except in the sphere of agriculture, the Bank was not entrusted with any great promotional role and that too on a limited scale.

Central banks occupy a pivotal position in the institutional fabric of an economy. The functions of a modern central bank are vastly different from what was expected from the early central banks 12founded in Europe in the 17th century. The evolution of central banking in the Indian context has its own specificity. The RBI, while discharging its statutory responsibilities, has played a crucial role in the national building process, particularly in the development of the financial sector. In fact, institution building constitutes a distinguishing feature of central banking in India.

FUNCTIONS OF RBI

a) Traditional functions

b) Development functions

c) Supervisory functions

(A) TRADITIONAL FUNCTIONS OF RBI

1. Issue of Currency Notes: As per the provisions of the **Section 22 of the Reserve Bank of India Act 1934** the RBI has sole right or authority to issue currency notes **except** one rupee note and coins of smaller denomination. RBI can exchange these currency notes for other denominations. RBI issues these currency notes (2, 5, 10, 20, 50, 100, 500, 1000, 2000) against the security of gold bullion, foreign securities, rupee coins, exchange bills, promissory notes and government of India bonds etc.

2. Banker to other Banks: RBI also guide, help and direct other commercial banks in the country.RBI can control the volume of bank reserves. Every commercial bank has to maintain a part of their reserves with Its parent (RBI). If bank need fund they approach to RBI for fund, that is called **Lender of the Last Resort.**

3. Banter to The Government: RBI works as an agent of the central and state governments. On the behalf of government it makes payments, taxes and deposits etc. It also represent the government at international level also. It maintains government accounts and provide financial advice to the government. It also manages government public debts and maintains foreign exchange reserves on behalf of the government. RBI also provides overdraft facility to the government in case of financial shortage.

4. Exchange Rate Management: For maintenance of the external value of rupee, RBI prepares domestic policies. Also it need to prepare and implement the foreign exchange rate policy which will help in attaining the exchange rate stability. For maintenance of exchange rate stability it has to bring demand and supply of foreign currency (U.S.) dollar close to each other.

5. Credit Control Function: Commercial banks creates credit according to demand in the economy. But if this credit creation is unchecked or unregulated then it leads the economy into inflationary cycles. If credit creation is below the required limit then it harms the growth of the economy. As a central bank of India, RBI has to look for growth with price stability. Thus it creates the credit creation capacity of commercial banks by using various credit control tools.

* ADVANCEMENT OF LEARNING * CORPORATELIFE * PATRIOTISM *

6. Supervisory Function: RBI supervise the banking system in India. RBI has power to issue licence for setting up new banks, to open new branches, to decide minimum reserves. RBI inspects functioning of commercial banks in India and abroad. RBI also guide and direct the commercial banks in India. RBI can conduct audit any of the bank.

(B) DEVELOPMENTAL FUNCTIONS OF RBI

1. Development of the Financial System: The financial systems includes - financial institutions, financial markets and financial instruments. The sound and efficient financial system is necessary for rapid economic development of the nation.

RBI encourages the banking and non - banking institution for maintenance of sound and healthy financial system.

2. Development of Agriculture: As we know, India is an agrarian economy so RBI always give attention to agriculture sector by assessing credit needs of this sector. Regional Rural Banks (RRB), National Bank for Agriculture and Rural Development (NABARD) which are only for agriculture finance comes under the control of the RBI.

3. Industrial Finance: For economic development of country, Industrial development is necessary. As we know industries includes small industries, middle industries, large scale industries etc all these industries development is necessary for overall economic development of country. For this purpose RBI supports the industrial sector also. RBI had played the vital role for setting up of such industrial finance institutions like ICICI Limited, IDBI, SIDBI, EXIM etc.

4. Training Provision: RBI always tried to provide essential training to the staff of the banking industry. RBI has set up banker's training college at several places. The training institute namely National Institute of Bank Management (NIBM), Bankers Staff College (BSC), College of Agriculture Banking (CAB) etc.

5. Data Collection: RBI always collects important statistical data on several topics such as interest rates, inflation, savings, investment, deflation etc. This data is very much useful for policy makers and researchers.

6. Publication of the Reports: RBI has its separate publication division. This division collect and publish data on different sector of the economy. The reports and bulletins are regularly published by the RBI. It includes RBI weekly reports, RBI annual reports, Report on Trend and Progress of commercial banks. This information is made available to the public also at cheaper rates.

7. Promotion of Banking Habits: RBI always takes necessary steps to promote the banking habits among people for economic development of country. RBI has set up many institutions such as Deposit Insurance Corporation 1962, UTI 1964, IDBI 1964, NABARD 1982, NHB 1988 etc. These organizations develop and promote the banking habits among the people.

8. Export Promotion: RBI always tries to encourage the facilities for providing finance for foreign trade especially exports from India. The Export - Import Bank of India (EXIM), and the Export Credit Guarantee Corporation of India (ECGC) are supported by refinancing their lending for export purpose.

(C) SUPERVISORY FUNCTIONS

1. Granting Licence to Banks: RBI grants licence to banks for carrying its business. RBI also provide licence for opening extension counters, new branches even to close down existing branches.

2. Bank Inspection: RBI has power to ask for periodical information from banks on various components of assets and liabilities.

* ADVANCEMENT OF LEARNING * CORPORATE LIFE * PATRIOTISM *

3. Control Over NBFIs: The non - bank financial institutions are not influenced by the working of a monitory policy. RBI has a right to issue directives to the NBFIs from time to time regarding their functioning. Through periodic inspection, it can control the NBFIs.

4. Implementation of Deposit Insurance Scheme: The RBI has set up the Deposit Insurance Guarantee Corporation in order to protect the deposit of small depositors. All bank deposits below Rs. 1 Lakh are insured with this corporation. The RBI work to implement the Deposit Insurance Scheme in case of a bank failure.

Q. Write a short note on:

a. Banking Ombudsman Scheme 2006

The Banking Ombudsman Scheme enables an expeditious and inexpensive forum to bank customers for resolution of complaints relating to certain services rendered by banks. The Banking Ombudsman Scheme is introduced under **Section 35A** of the **Banking Regulation Act, 1949** by RBI with effect from 1995.

Who is the Banking Ombudsman?

The Banking Ombudsman is a senior official appointed by the Reserve Bank of India to redress customer complaints against pitfalls in the stipulated banking services covered by the Banking Ombudsman Scheme 2006 (modifications were made in 2017). As on end April 2018, twenty Banking Ombudsmen have been appointed with their offices located mostly in state capitals. All Scheduled Commercial Banks, Regional Rural Banks and Scheduled Primary Co-operative Banks are covered under the Scheme.

Areas of customer redressal available with the Ombudsman mechanism

The RBI has listed around 25 areas where the customers can raise complaints with the Banking Ombudsman. Some of them are:

- Non-payment/ inordinate delay in the payment or collection of cheques, drafts, bills etc.;
- Non-payment/delay in payment of inward remittances;
- Failure/delay to issue drafts, pay orders or bankers' cheques;
- Non-adherence to prescribed working hours;
- Refusal to open deposit accounts without any valid reason for refusal;
- Levying of charges without adequate prior notice to the customer;
- Refusal/delay in closing the accounts;
- Non-observance of Reserve Bank guidelines on engagement of recovery agents by banks;

Procedure for making complaint with Banking Ombudsman

* ADVANCEMENT OF LEARNING * CORPORATE LIFE * PATRIOTISM *

A bank customer can file a complaint with the Banking Ombudsman simply by writing on a plain paper or through online. The customer can file a complaint with the Banking Ombudsman in the following grounds:

- the bank fails to provide reply to the customer's complaint in one month
- the bank rejects the complaint,
- the complainant is not satisfied with the reply given by the bank.

Limit on the amount of compensation

As per the present regulations, the ombudsman redressal is allowed for complaints where the compensation amount for any loss suffered by the complainant is limited to Rs 20 lakh. Similarly, the Banking Ombudsman may award compensation not exceeding Rs 1 lakh to the complainant for mental agony and harassment. The Banking Ombudsman will consider the loss of the complainant's time, expenses incurred by the complainant, harassment and mental anguish suffered by the complainant while passing the compensation.

Ombudsman Scheme for Non-Banking Financial Companies, 2018

The RBI introduced an NBFC Ombudsman scheme to redress complaints with regard to NBFCs in 2018.

The NBFC Ombudsman is a senior official appointed by the RBI to redress customer complaints against NBFCs for deficiency in certain services covered under the grounds of complaint specified under Clause 8 of the Scheme. Four NBFC Ombudsman have been appointed with their offices located at Chennai, Kolkata, New Delhi and Mumbai.

b. Lending by Banks.

The business of lending, which is main business of the banks, carry certain inherent risks and bank cannot take more than calculated risk whenever it wants to lend. Hence, lending activity has to necessarily adhere to certain principles.

The traditional principles of bank lending have been followed with certain modifications. The concept of security has undergone a radical change and profitability has been subordinated to social purpose in respect of certain types of lending. Let us now discuss the principles of lending in details:

1. Liquidity: Liquidity is an important principle of bank lending. Bank lend for short periods only because they lend public money which can be withdrawn at any time by depositors. They, therefore, advance loans on the security of such assets which are easily marketable and convertible into cash at a short notice.

A bank chooses such securities in its investment portfolio which possess sufficient liquidity. It is essential because if the bank needs cash to meet the urgent requirements of its customers, it should be in a position to sell some of the securities at a very short notice without disturbing their market prices much. There are certain securities such as central, state and local government bonds which are easily saleable without affecting their market prices.

The shares and debentures of large industrial concerns also fall in this category. But the shares and debentures of ordinary firms are not easily marketable without bringing down their market prices. So the banks should make investments in government securities and shares and debentures of reputed industrial houses.

* ADVANCEMENT OF LEARNING * CORPORATE LIFE * PATRIOTISM *

2. Safety: The safety of funds lent is another principle of lending. Safety means that the borrower should be able to repay the loan and interest in time at regular intervals without default. The repayment of the loan depends upon the nature of security, the character of the borrower, his capacity to repay and his financial standing.

Like other investments, bank investments involve risk. But the degree of risk varies with the type of security. Securities of the central government are safer than those of the state governments and local bodies. And the securities of state government and local bodies are safer than those of the industrial concerns. This is because the resources of the central government are much higher than the state and local governments and of the latter higher than the industrial concerns.

In fact, the share and debentures of industrial concerns are tied to their earnings which may fluctuate with the business activity in the country. The bank should also take into consideration the debt repaying ability of the governments while investing in their securities. Political stability and peace and security are the prerequisites for this.

It is very safe to invest in the securities of a government having large tax revenue and high borrowing capacity. The same is the case with the securities of a rich municipality or local body and state government of a prosperous region. So in making investments the bank should choose securities, shares and debentures of such governments, local bodies and industrial concerns which satisfy the principle of safety.

Thus from the bank's viewpoint, the nature of security is the most important consideration while giving a loan. Even then, it has to take into consideration the creditworthiness of the borrower which is governed by his character, capacity to repay, and his financial standing. Above all, the safety of bank funds depends upon the technical feasibility and economic viability of the project for which the loan is advanced.

3. Diversity: In choosing its investment portfolio, a commercial bank should follow the principle of diversity. It should not invest its surplus funds in a particular type of security but in different types of securities. It should choose the shares and debentures of different types of industries situated in different regions of the country. The same principle should be followed in the case of state governments and local bodies. Diversification aims at minimising risk of the investment portfolio of a bank.

The principle of diversity also applies to the advancing of loans to varied types of firms, industries, businesses and trades. A bank should follow the maxim: "Do not keep all eggs in one basket." It should spread it risks by giving loans to various trades and industries in different parts of the country.

4. Stability: Another important principle of a bank's investment policy should be to invest in those stocks and securities which possess a high degree of stability in their prices. The bank cannot afford any loss on the value of its securities. It should, therefore, invest it funds in the shares of reputed companies where the possibility of decline in their prices is remote.

Government bonds and debentures of companies carry fixed rates of interest. Their value changes with changes in the market rate of interest. But the bank is forced to liquidate a portion of them to meet its requirements of cash in cash of financial crisis. Otherwise, they run to their full term of 10 years or more and changes in the market rate of interest do not affect them much. Thus bank investments in debentures and bonds are more stable than in the shares of companies.

5. Profitability: This is the cardinal principle for making investment by a bank. It must earn sufficient profits. It should, therefore, invest in such securities which was sure a fair and stable return on the funds invested. The

* ADVANCEMENT OF LEARNING * CORPORATE LIFE * PATRIOTISM *

earning capacity of securities and shares depends upon the interest rate and the dividend rate and the tax benefits they carry.

It is largely the government securities of the centre, state and local bodies that largely carry the exemption of their interest from taxes. The bank should invest more in such securities rather than in the shares of new companies which also carry tax exemption. This is because shares of new companies are not safe investments.

c. Reserve fund

Section 17 of the Banking Regulations Act, 1949 provides for a Reserve Fund.

(1) Every banking company incorporated in India shall create a reserve fund and shall, out of the balance of profit of each year, as disclosed in the profit and loss account prepared under section 29 and before any dividend is declared, transfer to the reserve fund a sum equivalent to not less than twenty per cent of such profit.

(1A) Notwithstanding anything contained in sub-section (1), the Central Government may, on the recommendation of the Reserve Bank and having regard to the adequacy of the paid-up, capital and reserves of a banking company in relation to its deposit liabilities, declare by order in writing that the provisions of sub-section (1) shall not apply to the banking company for such period as may be specified in the order:

PROVIDED that no such order shall be made unless, at the time it is made, the amount in the reserve fund under sub-section (1), together with the amount in the share premium account is not less than the paid-up capital of the banking company.]

(2) Where a banking company appropriates any sum from the reserve fund or the share premium account, it shall, within twenty-one days from the date of such appropriation, report the fact to the Reserve Bank, explaining the circumstances relating to such appropriation:

PROVIDED that the Reserve Bank may, in any particular case, extend the said period of twenty-one days by such period as it thinks fit or condone any delay in the making of such report.

d. Cash Reserve fund/ Cash Reserve Ratio

Cash Reserve Ratio (CRR) is the mandatory reserves to be maintained with Reserve Bank of India. Every scheduled Bank is required to keep certain percentage of their demand and time liabilities, as cash balances with the Reserve Bank of India from time to time as per Section 42 of the Reserve Bank of India Act,. There is no maximum ceiling or floor rate in respect of CRR. The non-scheduled banks are required to maintain the cash reserve as per Section 18 of the Banking Regulation Act.

Procedure for Computation of CRR: In order to improve cash management by banks, as a measure of simplification, a lag of one fortnight in the maintenance of stipulated CRR by banks is provided.

Maintenance of CRR on Daily Basis: With a view to providing flexibility to banks in choosing an optimum strategy of holding reserves depending upon their intra fortnight cash flows, all Scheduled Commercial Banks are required to maintain minimum CRR balances up to 70 per cent of the average daily required reserves for a reporting fortnight

* ADVANCEMENT OF LEARNING * CORPORATE LIFE * PATRIOTISM *

on all days of the fortnight (Reserve Bank of India has increased the requirement of minimum daily CRR balance maintenance to 99 per cent effective from the first day of the fortnight beginning July 27, 2013). As present, no Interest is paid on Eligible Cash Balances maintained by Scheduled Commercial Banks with RBI under CRR:

Fortnightly Return in Form A (CRR):Under Section 42 (2) of the RBI Act, 1934, all Scheduled Commercial Banks are required to submit to Reserve Bank a provisional Return in Form 'A' within 7 days from the expiry of the relevant fortnight and the final Form 'A' return is required to be submitted to RBI within 20 days from expiry of the relevant fortnight. As regards the SB accounts, the calculation of the proportion of demand liabilities and time liabilities by Scheduled Commercial Banks in respect of their savings bank deposits on the basis of the position as at the close of business on 30th September and 31st March every year. The average of the minimum balances maintained in each of the month during the half year period should be treated by the bank as the amount representing the "time liability" portion of the savings bank deposits. When such an amount is deducted from the average of the actual balances maintained during the half year period, the difference would represent the "demand liability" portion. The proportions of demand and time liabilities so obtained for each half year should be applied for arriving at demand and time liabilities components of savings bank deposits for all reporting fortnights during the next half year.

Penalties: Penal interest will be charged as under in cases of default in maintenance of CRR by Scheduled Commercial Banks as per the directives of the Reserve Bank of India.

e. Banker's draft.

A **banker's draft** (also called a **bank cheque**, **bank draft)** is a cheque provided to a customer of a bank or acquired from a bank for remittance purposes, that is drawn by the bank, and drawn on another bank or payable through or at a bank.

A normal cheque represents an instruction to transfer a sum of money from the drawer's account to the payee's account. When the payee deposits the cheque into their account, the cheque is verified as genuine (or 'cleared', a process typically taking several days) and the transfer is performed (usually via a clearing house or similar system). Any individual or company operating a current account (or checking account) has authority to draw cheques against the funds stored in that account.

However, it is impossible to predict when the cheque will be deposited after it is drawn. Because the funds represented by a cheque are not transferred until the cheque is deposited and cleared, it is possible the drawer's account may not have sufficient funds to honour the cheque when the transfer finally occurs. This dishonoured or 'bounced' cheque is now worthless and the payee receives no money, which is why cheques are less secure than cash.

By contrast, when an individual requests a banker's draft they must immediately transfer the amount of the draft (plus any applicable fees and charges) from their own account to the bank's account. (An individual without an account at the issuing bank may request a banker's draft and pay for it in cash, subject to applicable anti-money laundering law and the bank's issuing policies.) Because the funds of a banker's draft have already been transferred they are proven to be available; unless the draft is a forgery or stolen, or the bank issuing the draft goes out of business before the draft is deposited and cleared, the draft will be honoured. There is a caveat in that the bank protocols may declare the draft too old to be valid; this has been known to happen when the draft is over six years old. Like other types of cheques, a draft must still be cleared and so it will take several days for the funds to become available in the payee's account.

* ADVANCEMENT OF LEARNING * CORPORATELIFE * PATRIOTISM *

A bank draft is not the same as a cashier's check, which is a check that is

1. drawn on a bank;
2. signed by an officer or employee of the bank on behalf of the bank as drawer;
3. a direct obligation of the bank; and
4. provided to a customer of the bank or acquired from the bank for remittance purposes.[3]

Under English law a banker's draft is not a bill of exchange because it is not drawn on a third party (it is drawn on the bank itself), ***Commercial Banking Co of Sydney Ltd v Mann.***

f. ATM

An automated teller machine (ATM) is an electronic banking outlet that allows customers to complete basic transactions without the aid of a branch representative or teller. Anyone with a credit card or debit card can access most ATMs. The first ATM appeared in London in 1967, and in less than 50 years, ATMs had spread around the globe, securing a presence in every major country and even tiny little island nations such as Kiribati and the Federated States of Micronesia.

There are two primary types of ATMs. Basic units allow customers to withdraw cash and receive reports of their account balances only. The more complex machines accept deposits, facilitate line-of-credit payments and report account information. To access the advanced features of the complex units, a user must be an account holder at the bank that operates the machine.

Analysts anticipate ATMs will become even more popular and forecast an increase in the number of ATM withdrawals. ATMs of the future are likely to be full-service terminals instead of or in addition to traditional bank tellers.

ATM Ownership: In many cases, banks and credit unions own ATMs. However, individuals and businesses may also buy or lease ATMs, on their own or through an ATM franchise. When individuals or small businesses such as restaurants or gas stations own ATMs, the profit model is based on charging fees to the machine's users. Banks also own ATMs with this intent, but in addition, the convenience of an ATM is a service banks use to attract clients. ATMs also take some of the customer service burden off bank tellers, saving banks money in payroll costs.

ATM Fees: Account holders can use their bank's ATMs at no charge, but accessing funds through a unit owned by a competing bank usually incurs a small fee.

Using ATMs Abroad: For travelers, ATMs make it simple to access their checking or savings accounts from almost anywhere in the world. When travelers use foreign ATMs, they receive a better exchange rate than they would at most currency exchange offices. Additionally, using an ATM is easier than cashing traveler's checks, and arguably, it makes travel safer, as the traveler doesn't have to carry a lot of cash. However, the account holder's bank may charge a transaction fee or a percentage of the amount exchanged. Most ATMs do not list the exchange rate on the receipt, making it challenging to track spending.

* ADVANCEMENT OF LEARNING * CORPORATE LIFE * PATRIOTISM *

g. Teller

An employee of a bank, or similar institution, whose job includes the responsibilities of helping the bank customers with their banking needs, such as depositing a check or making a withdrawal. Most bank tellers are located behind a counter or desk at the bank, and communicate with the customer across that barrier. Some banks have implemented a drive-through system where tellers can help the customers with their banking needs without the customer having to leave their car.

Bank tellers are responsible for handling customer financial transactions like deposits, withdrawals, transfers, money orders, and checking. They will know the ins and outs of the bank's systems and policies. Sometimes, they are asked to promote the bank's services, like a special savings account or an additional checking account to customers. A bank teller's duties also may include counting cash, answering phones, filing deposit slips and paperwork, managing ATM deposits, and balancing numbers at the end of the day.

h. Circumstances where a Banker can refuse the payment of a cheque.

On the following grounds a banker can terminate the payment of a cheque :

1. **Countermand Of Payment:** The drawer of a cheque can stop the payment of a cheque by informing the banker either on telephone or through message. The banker will suspend the payment.
2. **Customers Balance:** The banker can refuse to make the payment of a cheque if his balance is not sufficient to cover the cheque. While one draft facility case is different.
3. **Payment In Due Course:** The banker can refuse to make the payment of cheques which is not according the instructions of the drawer or it is presented after the office hours.
4. **Marking Cheques:** A drawer may get a particular cheque marked from his banker. The banker will retain the amount in order to honour the marked cheques. Bankers always honours these cheques first and other cheques at the end.
5. **Forgery Of The Drawer Signature:** If the bank is doubtful about the signature of the cheque then he will refuse the payment.
6. **Notice Of The Customers Death:** The banker will terminate the payment of a cheque if he receives the notice of the customers death.
7. **Making Of Receiving Order:** If the court satisfied that the customer appears to be insolvent it will issue a receiving order and banker will refuse to make the payment.
8. **Trust Funds:** If the banker is satisfied that his customer by breach of trust is crediting the trust funds to his account, the banker may refuse to make the payment.
9. **Instruments Other Then Cheque:** The banker can refuse to honour the instruments other than cheque.
10. **Torn Or Cancelled Cheque:** If the cheque is torn or cancelled the banker may refuse the payment for a cheque.

* ADVANCEMENT OF LEARNING * CORRUPT FREE LIFE * PATRIOTISM *

11. **Out Dated:** If the cheque is post dated the bank will not honour the cheque.

12. **Difference In Words and Figures:** If the amount stated on cheque differ from the amount expressed in figures, the banker will refuse the payment or a cheque.

13. **Particular Branch:** The bank will refuse to make the payment of a cheque if it is presented at a branch at which the customers account is not available.

14. **Lost Or Stolen:** If a cheque is lost or stolen and drawer informs the bank well in time, the bank will refuse to honour the cheque.

15. **Irregular Endorsement:** If the endorsement in the cheque is irregular the bank will not make the payment of the cheque.

16. **Joint Account:** If the cheque is not drawn according the account holders instructions, or at the death of one party, the banker can refuse to make the payment and he will decide about the payment according the instructions.

17. **Partnership Account:** The banker will not make the payment unless the cheque is signed by the all partners. The death of partner dissolves the partnership.

18. **Company Account:** At the time of opening an account company provides a copy of resolution passed by the directors. According to the resolution authorized person can operate the account. If unauthorized person draws a cheque the banker will dishonour the cheque.

i. Difference between Banking and Money Lending

A banking business is, however, distinct from a pure money-lending business. A money-lender usually advances his own funds.

A bank accepts deposits from the public, which are withdraw-able by cheques, and the funds so accumulated are lent to its needy customers against goods or securities or by discounting bills.

Further, the bank pays interest to its depositors, and the deposits are withdraw-able by cheques.

Money-lenders generally .do not receive deposits from public, and even if they receive such deposits, it is not obligatory on their part to pay a uniform interest rate on such deposits; and these deposits are not chequable.

Further, very often, when there is credit stringency, bankers may borrow from other banks or central bank to lend to their customers. Money-lenders obviously do not do so.

* ADVANCEMENT OF LEARNING * CORPORATE LIFE * PATRIOTISM *

Q. What do you mean by Banking Regulation? Is Banking Regulation necessary? Explain the Impact of the Banking Regulation Act, 1949 on smooth running of banking business in India by highlighting its important provisions.

Banks are among the most regulated businesses. Ever since the inception of banking as a business in the medieval period, the state has exercised some form of control. By the 19th century, banks had become more numerous, larger, and a significant part of the economy in the Western world. With that, the extent of control over them increased.

By the end of the 20th century, banks were subject not only to national but also international regulations, such as those under the Basel regime.

While banks have been regulated since their inception, the approach to regulation has followed an evolutionary path where we can discern different paradigms. In this article, I shall describe two paradigms that were prevalent over the last two centuries and a third emergent one that may become more relevant in the future. I will call these three paradigms the Money paradigm, the Intermediation paradigm, and the emerging Marketplace paradigm.

The Money paradigm views banks essentially as monetary institutions whose primary role is to “create" money. Until the end of 19th century, the main function of banks was to issue bank notes that were then used as a means of exchange. Banks would issue notes against stocks of gold (the earliest depositors were goldsmiths) that could be used as money. This practice set the foundation of the gold standard which dominated until the mid-20th century.

When banks are seen primarily as issuers of money, issuing loans is incidental. The approach to bank regulation focuses on the role they play in the creation and use of money, and on controlling the price of money i.e interest rates. In most economies, there was some form of interest rate regulation on liabilities up until the 1980s. Controlling the quantity of money issued also resulted in adherence to the gold standard.

Central banks became more powerful in the 20th century, with a monopoly in issuance of money which transformed note issuance of banks into deposits. Post World War II, under the Bretton Woods system, the gold standard was abandoned and central banks started issuing “fiat" money, making the money role much less important. The intermediation role became more prominent and progressively became the focus of regulation. This led to the Intermediation paradigm of regulation.

In the Intermediation paradigm, the role of banks is to use loans with deposits as “raw material". The Banking Regulation Act of 1949, which is the principal law for banking regulation in India, defines banking as an activity of “accepting for the purpose of lending or investing, deposit of money from public", thus indicating the primacy of the Intermediation paradigm.

Regulating banks as financial intermediaries anchors regulations on the asset side. The most prominent example of the Intermediation paradigm is the Basel regime that has at its core capital regulation based on risk-weighted assets.

These two traditional paradigms of bank regulation sit somewhat uncomfortably with each other. The Money paradigm results in some form of administered interest rates, which will invariably result in mispricing of risk and, hence, misallocation of capital by banks due to artificially and somewhat arbitrarily determined cost of funds. The Intermediation paradigm, on the other hand, will mostly result in capital regulation with unregulated deposit pricing, which will invariably dampen monetary transmission. Policy conversations on monetary policy transmission focus on lending rates of banks, with very little, if any, attention paid to deposit pricing. As a result, the banking channel is quite poor in transmitting monetary policy, as we witness in India.

With the development of financial markets, the role of banks has evolved. Banks have more tradable assets and liabilities on their balance sheets. With this, a third paradigm has emerged, which we could call the Marketplace.

The banking system can be viewed as a marketplace for funds where banks act as market makers. We could view the two sides of the balance sheets of banks as autonomous businesses that operate under independent competitive dynamics. Banks, as market makers, are constantly giving two-way quotes (the bid-ask quotes) through deposit and loan pricing. Regulating market making is primarily about regulating the liquidity provided by the market maker. It

* ADVANCEMENT OF LEARNING * CORPORATE LIFE * PATRIOTISM *

means that the primary approach to banking regulation should be to act on both sides of the balance sheet so that the system stays liquid.

In the more developed financial systems, there is a clear evolution of the regulatory approach from the Money to the Marketplace paradigm, reflecting the underlying evolution in the role and functioning of banks. As the financial markets develop in India and bank balance sheets have more tradable securities and loans, this paradigm will become more relevant. But we are not there yet. A comprehensive approach should carefully balance these three paradigms. Banks are a collection of several businesses and activities. For specific businesses or activities, one of the three paradigms may be more relevant.

Banks are complex and regulating them is always challenging. Their central role in the economy, especially for a developing country like India, means that regulating banks is an important component of the management of the overall economy. Effective regulation must recognize the complexity of banks. Striking a balance between the three paradigms outlined above can help in more effective regulation.

There are three main reasons explaining why regulations are in place for banks.

Fragile banking functions: In banking, the deposits received from households are considered as liabilities while loans offered constitute as its assets. Therefore, the bank's balance sheet largely consists of liquid liabilities and illiquid assets. In any case where the public were to lose confidence in the banking system, a bank run would occur. Knowing that a bank supplies loans from many small deposits pooled together, its liquidity is trapped in long term investments (loans). Hence, the consequence of a bank run would likely be the bank collapsing due to its inablilty to cater to the sudden increase in cash demand.

Having a central bank (regulation) would mitigate this risk of default given its role as the 'lender of last resort'. In times of need, the central bank can supply liquidity to banks, thus preventing the collapse.

Presence of systemic risk: Financial institutions and banks that are huge and highly interconnected impose systemic risk to the banking system. A default by a bank can lead to the default of its creditor banks on their own counter-parties and so on. This effect by one large bank may lead to a catastrophic effect on the rest of the other financial institutions. *(refer to 2008 financial crisis)*

Facing the 'too-big-to-fail' problem, regulators are needed to monitor and restrict banking activities that may lead to such scale of banking failure.

Protection of depositors: The depositors, being the creditors of a bank are usually not well informed on the bank's investment activities. Moral hazard may emerge when banks engage in investments that are too risky at the cost of its depositors.

Having a regulator to monitor banks on the behalf of depositors provides assurance and maintains their confidence in the financial system. Furthermore with deposit insurance by the government, it protects the depositors and lessens the probability of a bank run which may result in the collapse of the financial system.

These are the reasons for regulations rather than a free banking system. Though there are arguments against regulations (costs, moral hazards & lack of diversification), we do see majority of banks across the world being regulated

* ADVANCEMENT OF LEARNING * CORPORATE LIFE * PATRIOTISM *

BANKING REGULATION ACT, 1949

The Banking Regulation Act, 1949 is one of the important legal frame works. Initially the Act was passed as Banking Companies Act,1949 and it was changed to Banking Regulation Act 1949. Along with the Reserve Bank of India Act 1935, Banking Regulation Act 1949 provides a lot of guidelines to banks covering wide range of areas. Some of the important provisions of the Banking Regulation Act 1949 are listed below.

- The term banking is defined as per Sec 5(i) (b), as acceptance of deposits of money from the public for the purpose of lending and/or investment. Such deposits can be repayable on demand or otherwise and withdraw able by means of cheque, drafts, order or otherwise.
- Sec 5(i)(c) defines a banking company as any company which handles the business of banking.
- Sec 5(i)(f) distinguishes between the demand and time liabilities, as the liabilities which are repayable on demand and time liabilities means which are not demand liabilities.
- Sec 5(i)(h) deals with the meaning of secured loans or advances. Secured loan or advance granted on the security of an asset, the market value of such an asset in not at any time less than the amount of such loan or advances. Whereas unsecured loans are recognized as a loan or advance which is not secured.
- Sec 6(1) deals with the definition of banking business.
- Sec 7 specifies banking companies doing banking business in India should use at least on work bank, banking, banking company in its name.

Other Important Features of the Act are:

1. Prohibition of Trading (Sec. 8): According to Sec. 8 of the Banking Regulation Act, a banking company cannot directly or indirectly deal in buying or selling or bartering of goods. But it may, however, buy, sell or barter the transactions relating to bills of exchange received for collection or negotiation.

2. Non-Banking Assets (Sec. 9): According to Sec. 9 "A banking company cannot hold any immovable property, howsoever acquired, except for its own use, for any period exceeding seven years from the date of acquisition thereof. The company is permitted, within the period of seven years, to deal or trade in any such property for facilitating its disposal". Of course, the Reserve Bank of India may, in the interest of depositors, extend the period of seven years by any period not exceeding five years.

3. Management (Sec. 10): Sec. 10 (a) states that not less than 51% of the total number of members of the Board of Directors of a banking company shall consist of persons who have special knowledge or practical experience in one or more of the following fields:

(a) Accountancy;

(b) Agriculture and Rural Economy;

(c) Banking;

(d) Cooperative;

ADVANCEMENT OF LEARNING CORPORATE LIFE* PATRIOTISM

(e) Economics;

(f) Finance;

(g) Law;

(h) Small Scale Industry.

The Section also states that at least not less than two directors should have special knowledge or practical experience relating to agriculture and rural economy and cooperative. Sec. 10(b) (1) further states that every banking company shall have one of its directors as Chairman of its Board of Directors.

4. Minimum Capital and Reserves (Sec. 11): Sec. 11 (2) of the Banking Regulation Act, 1949, provides that no banking company shall commence or carry on business in India, unless it has minimum paid-up capital and reserve of such aggregate value as is noted below:

(a) Foreign Banking Companies: In case of banking company incorporated outside India, aggregate value of its paid-up capital and reserve shall not be less than Rs. 15 lakhs and, if it has a place of business in Mumbai or Kolkata or in both, Rs. 20 lakhs.

It must deposit and keep with the R.B.I, either in Cash or in unencumbered approved securities:

(i) The amount as required above, and

(ii) After the expiry of each calendar year, an amount equal to 20% of its profits for the year in respect of its Indian business.

(b) Indian Banking Companies: In case of an Indian banking company, the sum of its paid-up capital and reserves shall not be less than the amount stated below:

(i) If it has places of business in more than one State, Rs. 5 lakhs, and if any such place of business is in Mumbai or Kolkata or in both, Rs. 10 lakhs.

(ii) If it has all its places of business in one State, none of which is in Mumbai or Kolkata, Rs. 1 lakh in respect of its principal place of business plus Rs. 10,000 in respect of each of its other places of business in the same district in which it has its principal place of business, plus Rs. 25,000 in respect of each place of business elsewhere in the State.

No such banking company shall be required to have paid-up capital and reserves exceeding Rs. 5 lakhs and no such banking company which has only one place of business shall be required to have paid- up capital and reserves exceeding Rs. 50,000.

In case of any such banking company which commences business for the first time after 16th September 1962, the amount of its paid-up capital shall not be less than Rs. 5 lakhs.

(iii) If it has all its places of business in one State, one or more of which are in Mumbai or Kolkata, Rs. 5 lakhs plus Rs. 25,000 in respect of each place of business outside Mumbai or Kolkata? No such banking company shall be required to have paid-up capital and reserve excluding Rs. 10 lakhs.

ADVANCEMENT OF LEARNING CORPORATE LIFE * PATRIOTISM *

5. Capital Structure (Sec. 12): According to Sec. 12, no banking company can carry on business in India, unless it satisfies the following conditions:

(a) Its subscribed capital is not less than half of its authorized capital, and its paid-up capital is not less than half of its subscribed capital.

(b) Its capital consists of ordinary shares only or ordinary or equity shares and such preference shares as may have been issued prior to 1st April 1944. This restriction does not apply to a banking company incorporated before 15th January 1937.

(c) The voting right of any shareholder shall not exceed 5% of the total voting right of all the shareholders of the company.

6. Payment of Commission, Brokerage etc. (Sec. 13): According to Sec. 13, a banking company is not permitted to pay directly or indirectly by way of commission, brokerage, discount or remuneration on issues of its shares in excess of 2½% of the paid-up value of such shares.

7. Payment of Dividend (Sec. 15): According to Sec. 15, no banking company shall pay any dividend on its shares until all its capital expenses (including preliminary expenses, organisation expenses, share selling commission, brokerage, amount of losses incurred and other items of expenditure not represented by tangible assets) have been completely written-off.

But Banking Company need not:

(a) Write-off depreciation in the value of its investments in approved securities in any case where such depreciation has not actually been capitalized or otherwise accounted for as a loss;

(b) Write-off depreciation in the value of its investments in shares, debentures or bonds (other than approved securities) in any case where adequate provision for such depreciation has been made to the satisfaction of the auditor;

(c) Write-off bad debts in any case where adequate provision for such debts has been made to the satisfaction of the auditors of the banking company.

Floating Charges: A floating charge on the undertaking or any property of a banking company can be created only if RBI certifies in writing that it is not detrimental to the interest of depositors — Sec. 14A. Similarly, any charge created by a banking company on unpaid capital is invalid — Sec. 14.

8. **Reserve Fund/Statutory Reserve (Sec. 17):** According to Sec. 17, every banking company incorporated in India shall, before declaring a dividend, transfer a sum equal to 20% of the net profits of each year (as disclosed by its Profit and Loss Account) to a Reserve Fund.

The Central Government may, however, on the recommendation of RBI, exempt it from this requirement for a specified period. The exemption is granted if its existing reserve fund together with Securities Premium Account is not less than its paid-up capital.

If it appropriates any sum from the reserve fund or the securities premium account, it shall, within 21 days from the date of such appropriation, report the fact to the Reserve Bank, explaining the circumstances relating to such appropriation. Moreover, banks are required to transfer 20% of the Net Profit to Statutory Reserve.

* ADVANCEMENT OF LEARNING * CORPORATE LIFE * PATRIOTISM *

9. **Cash Reserve (Sec. 18):** Under Sec. 18, every banking company (not being a Scheduled Bank) shall, if Indian, maintain in India, by way of a cash reserve in Cash, with itself or in current account with the Reserve Bank or the State Bank of India or any other bank notified by the Central Government in this behalf, a sum equal to at least 3% of its time and demand liabilities in India.

The Reserve Bank has the power to regulate the percentage also between 3% and 15% (in case of Scheduled Banks). Besides the above, they are to maintain a minimum of 25% of its total time and demand liabilities in cash, gold or unencumbered approved securities. But every banking company's asset in India should not be less than 75% of its time and demand liabilities in India at the close of last Friday of every quarter.

10. **Liquidity Norms or Statutory Liquidity Ratio (SLR) (Sec. 24):** According to Sec. 24 of the Act, in addition to maintaining CRR, banking companies must maintain sufficient liquid assets in the normal course of business. The section states that every banking company has to maintain in cash, gold or unencumbered approved securities, an amount not less than 25% of its demand and time liabilities in India.

This percentage may be changed by the RBI from time to time according to economic circumstances of the country. This is in addition to the average daily balance maintained by a bank.

Again, as per Sec. 24 of the Banking Regulation Act, 1949, every scheduled bank has to maintain 31.5% on domestic liabilities up to the level outstanding on 30.9.1994 and 25% on any increase in such liabilities over and above the said level as on the said date.

But w.e.f. 26.4.1997 fortnight the maintenance of SLR for inter-bank liabilities was exempted. It must be remembered that at the start of the preceding fortnights, SLR must be maintained for outstanding liabilities.

11. Restrictions on Loans and Advances (Sec. 20): After the Amendment of the Act in 1968, a bank cannot:

(i) Grant loans or advances on the security of its own shares, and

(ii) Grant or agree to grant a loan or advance to or on behalf of:

(a) Any of its directors;

(b) Any firm in which any of its directors is interested as partner, manager or guarantor;

(c) Any company of which any of its directors is a director, manager, employee or guarantor, or in which he holds substantial interest; or

(d) Any individual in respect of whom any of its directors is a partner or guarantor.

Note:

(ii)(c) Does not apply to subsidiaries of the banking company, registered under Sec. 25 of the Companies Act or a Government Company.

12. Accounts and Audit (Sees. 29 to 34A): The above Sections of the Banking Regulation Act deal with the accounts and audit. Every banking company, incorporated in India, at the end of a financial year expiring after a period of 12 months as the Central Government may by notification in the Official Gazette specify, must prepare a Balance Sheet

* ADVANCEMENT OF LEARNING * CORPORATE LIFE * PATRIOTISM *

and a Profit and Loss Account as on the last working day of that year, or, according to the Third Schedule, or, as circumstances permit.

At the same time, every banking company, which is incorporated outside India, is required to prepare a Balance Sheet and also a Profit and Loss Account relating to its branch in India also. We know that Form A of the Third Schedule deals with form of Balance Sheet and Form B of the Third Schedule deals with form of Profit and Loss Account.

It is interesting to note that a revised set of forms have been prescribed for Balance Sheet and Profit and Loss Account of the banking company and RBI has also issued guidelines to follow the revised forms with effect from 31st March 1992.

According to Sec. 30 of the Banking Regulation Act, the Balance Sheet and Profit and Loss Account should be prepared according to Sec. 29, and the same must be audited by a qualified person known as auditor. Every banking company must take previous permission from RBI before appointing, reappointing or removing any auditor. RBI can also order special audit for public interest of depositors.

Moreover, every banking company must furnish their copies of accounts and Balance Sheet prepared according to Sec. 29 along with the auditor's report to the RBI and also the Registers of companies within three months from the end of the accounting period.

Giving directions to Banking Companies: Section 35A: Under Section on 35A, the Reserve Bank may caution or prohibit banking companies generally or any banking company in particular against entering into certain types of operations.

Prior approval from RBI for appointment of Managing Director, etc. Section 35 AB

According to this section, prior approval of RBI should be obtained for the appointment, re-appointment, remuneration and removal of the chairman or a director of a banking company. And for the amendments of provisions in the Memorandum or Articles or Resolutions of a General Meeting or Board of Directors, the prior approval of RBI is necessary.

Removal of managerial and any other persons from office: Section 36AA and Section 36AB

Under these sections, the RBI has power to remove managerial and other persons from office and to appoint additional directors.

Moratorium under the orders of High Court (Suspension of Business) Section 37: According to this section when a banking company is temporarily unable to meet its obligations it may apply to the High Court requesting an order for staying the commencement or continuance of all legal actions and proceedings against it for a period of not exceeding 6 months. Such stay is generally called a moratorium.

For such requisition, the banking company should submit an application along with a report of the RBI in this regard. In that report the RBI indicates that the banking company is able to pay its debts if the application is granted. If such report is not obtained from the RBI, the banking company cannot get the grant of moratorium.

Winding up of Banking Companies: Section 38 to 44: Sections 38 to 44 of the Act lay down the provisions for winding up of a banking company. The RBI may apply for the winding up of a banking company if,

* ADVANCEMENT OF LEARNING * CORPORATE LIFE * PATRIOTISM *

(i) It fails to comply with the requirements as to minimum Paid-up capital and reserves as laid down in Section 11, or

(ii) Is disentitled to carry on the banking business for want of license under Section 22, or

(iii) It has been prohibited from receiving fresh deposits by the Central Government or the Reserve Bank, or

(iv) It has failed to comply with any requirement of the Act, and continues to do so even after the Reserve Bank calls upon it to do so,

(v) The Reserve Bank thinks that a compromise or arrangement sanctioned by the court cannot be worked satisfactorily, or

(vi) The Reserve Bank thinks that according to the returns furnished by the company it is unable to pay its debts or its continuance is prejudicial to the interests of the depositors.

The banking company cannot be voluntarily wound up unless the Reserve Bank certifies that it is able to pay its debts in full.

Amalgamation of Banking Companies: Section 44A: The procedures for amalgamation of banking companies are given under this section. As per this section the scheme of amalgamation (i.e., the terms and conditions of amalgamation) is to be approved by a majority - 2/3 of the total voting ratios - of the shareholders in a general meeting.

The unwilling shareholders are entitled to receive the value of their shares as may be determined by the RBI. The RBI has to sanction the scheme of amalgamation after the shareholders' approval.

The assets and liabilities are transferred to the acquiring bank according to the directions of RBI mentioned in the sanction order. The RBI issues order for the dissolution of the first bank on a specified date.

Application by RBI for Moratorium: Section 45: Under this section the RBI may apply to the Central Government for an order of Moratorium in respect of banking company, if it considers fit. According to the application, an order is passed staying all actions and proceedings against the banking company for a specified period. During the period of Moratorium the RBI may prepare a detailed scheme for its reconstruction or amalgamation with any other banking company.

* ADVANCEMENT OF LEARNING * CORPORATE LIFE * PATRIOTISM *

Q. What do you mean by negotiable instrument? What are the different kinds of negotiable instruments? Explain with illustrations

Negotiable instruments are the most common credit devices utilized in business society. Negotiable instrument's importance lies in the fact that these are more readily transferred than ordinary claims or contract rights that the transferee of a negotiable instrument may acquire greater rights than would an ordinary assignee. Though basically, negotiable instruments are written promises or orders to pay money, such as promissory notes, bills of exchange and cheques which when in proper form, may be transferred from person to person as a substituted of money. The law relating to negotiable instruments in India is incorporated in Negotiable Instrument Act, 1881. The Act is not comprehensive. It does not affect the local usage or customs. If any local usage or custom is contrary to the provisions of this act, the local usage overrides the Act. The act includes only three instruments in its ambit, viz. Bill of exchange,

promissory note and cheque. But the act will also be extended to other instruments possessing the characteristics of a negotiable instrument, by local customs, for example Hundi. The act also does not prohibit the transfer of instruments by other methods. e.g. by assignment.

Meaning of Negotiable Instruments: According to **Section 13(a)**, Negotiable Instrument means a promissory note, bill of exchange or cheque payable either to order or to bearer, whether the 'words' order or 'bearer' appear on the instrument or not. Any other instrument can be added to these three if it satisfies two conditions of negotiability. One is that it is by customs of trade transferable by delivery or by endorsement and delivery; second is that it is capable of being sued upon by the person holding out in his own name. The nature of negotiable instrument is such that property in it is acquired by every person who takes it bonafide and for value, notwithstanding any defect of title in the person from whom he took it. On this basis a negotiable instrument may be defined as a contractual obligation in writing and signed by the party executing it, containing an unconditional promise or order to pay a sum certain in-money on demand, or at a fixed or determinable future time, payable to bearer or to the order of a specified person.

Essential Elements of Negotiable Instrument

1. A negotiable instrument must be in writing, which includes typing, printing and engraving.
2. The instrument must be signed by the maker or drawer.
3. There must be a promise if it is a promissory note or order to pay if it is a bill of exchange.
4. The promise or order must be unconditional. If it is conditional the instrument is not negotiable.
5. A negotiable instrument must call for payment in money. If the promise or order is for anything else, the instrument is not negotiable.
6. The instrument must not only call for payment in money but also for a certain sum.
7. A negotiable instrument must be payable at a time which is certain to arrive which may be payable either on demand or at a particular time or at a determinable future time. If it is payable when convenient, the instrument is not negotiable because the day of payment may not arrive. The requirement that there must be a time certain to arrive does not mean that the instrument must specify a fixed date for payment.
8. A negotiable instrument must be payable to order or bearer: Without the words order or bearer, the instrument would not be negotiable because, if they were not there, no one but the payee could present them for payment. If it is merely payable to Ram, it is not negotiable. It is not necessary that the instrument actually use the words 'order' or 'bearer'. And other words indicating the same intention are sufficient. Pay to holder could be used in place of 'order' or 'bearer'.
9. In the case of a bill of exchange or cheque, the drawee must be named or described with reasonable certainty. The purpose of this requirement is to enable the holder of the instrument to know to whom he must go for payment.

Presumptions as to Negotiable Instruments: Since the philosophy underlying the law of Negotiable instruments is that business transactions should be facilitated by making available evidence of right to money that will pass freely from hand to hand. In order to facilitate the free transfer of negotiable instruments from one party to another, Section 118 of the Act provides that until the contrary is proved, the following presumptions shall be made :

* ADVANCEMENT OF LEARNING * CORPORATELIFE * PATRIOTISM *

1. That every negotiable instrument was made or drawn, accepted, endorsed and negotiated or transferred for consideration.

2. That it bears the date on which it was made or drawn.

3. That every accepted bill was accepted within a reasonable time after its date and before its maturity.

4. That every transfer of a negotiable instrument was made before maturity.

5. That the endorsements appearing on it were made in the order in which they appear thereon.

6. Where an instrument has been lost or destroyed, that it was duly stamped and the stamp was duly cancelled.

7. That the holder of the instrument is a holder in due course.

The object of these presumptions is to declare the instrument as valid and in good order it a suit is filed in respect of a negotiable instrument, the Court will presume that the instrument was in good order and valid. If any party challenges its validity, he shall have to prove to the contrary. These presumptions are necessary in the case of negotiable instruments, as they are credit instruments and intended to be created as money which can pass freely from hand to hand.

Negotiable instruments act includes only three types of instruments :

1. Promissory note.

2. Bill of Exchange.

3. Cheque.

Promissory note: Promissory note is defined by Section 4 of the Negotiable Instruments Act. A promissory note is an instrument in writing containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to or to the order of a certain person or to the bearer of the instrument.

ELEMENTS OF PROMISSORY NOTE: An instrument to be a promissory note must possess the following elements :

(1) It must be in writing: Mere verbal promise to pay will not do. The method of writing is important, but it must be in a media that cannot be altered easily.

(2) It must contain an express promise or clear undertaking to pay: A promise to pay cannot be inferred; it must be express. A mere acknowledgement is not enough.

(3) The promise to pay must be unconditional: We have seen before that an instrument, to be negotiable, must contain an unconditional promise or order. So a promise to pay contained in a note must be unconditional. A conditional undertaking destroys the negotiable character of an otherwise negotiable instrument. But a promise to pay at a particular place or after a specified time or on the happening of an event which must happen is not conditional. For example, I promise to pay B Rs. 50 seven days after C's death is not conditional, for C is certain to die some time or the other.

(4) The maker must Sign the promissory note: The person who draws the instrument and signs it is known as the maker and the person to whom the promise is made is called the payee. The instrument will be complete only

* ADVANCEMENT OF LEARNING * CORPORATELIFE * PATRIOTISM *

when it is signed by the maker even when it is written by him and his name appears in the body of instrument. Signature may be in any part of the instrument, and may be expressed by a thumb mark or any other mark, if the executant is illiterate.

(5) **The maker must be a certain person:** The note itself must show clearly who is the person engaging himself to pay, Where the promisors are more than one they may bind themselves jointly or jointly and severally but not in the alternative.

(6) **The payee must be certain:** A promissory note must contain a promise to pay to some person or persons ascertained by name or designation or to their order. A promissory note made payable to the maker himself it nullity but if such a note is endorsed by him, it becomes payable to bearer and is valid.

(7) The sum payable must be certain and the amount must not be capable of contingent additions or subtractions. Thus, if A promises to pay Rs.500 and all other sums which shall become due to him or to pay 180 and all fines according to rules, the instrument is not a promissory note.

(8) Payment must be in legal money of the country. Thus an agreement to pay money or grain or to deliver 100 tons of iron is not a promissory note.

(9) A bank note or a currency note is not a promissory note within the meaning of this section. They are expressly excluded from the definition, as they are treated as money and not merely securities for money. A promissory note or a draft cannot be made payable to bearer, no matter whether it is payable on demand or after a certain period.

(10) Other matters of form like number, place, date etc., are usually found given in notes, but they are not essential in law.

Bill Of Exchange: According to ***Section 5 of the Negotiable Instruments Act***, A bill of exchange is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the Instrument. The definition of Bill of Exchange is very similar to that of a promissory note and for most purposes the rules which apply to notes are in general applicable to bills. The fundamental ingredients are the same. The drawer like the makers must be certain, the order to pay must be unconditional, the amount of Bill and the payee and the drawer, must be certain and the contract must be in writing. The maker of a note corresponds to the acceptor of a bill, and when a note is endorsed it is exactly similar to a bill, for then it is an order by the endorser of the note upon the maker to pay the endorsee. The endorser is, as it were, the drawer, the maker, the acceptor and the endorsee is the payee.

Essentials of a Bill of Exchange

1. It must be in writing and may be in any language.

2. It must be an order to pay by the drawer to the drawee.

3. The order to pay must be unconditional. If the order to pay is conditional, the bill of exchange becomes invalid.

4. There are three parties in a bill of exchange.

(a) Drawer: The person who makes the bill.

* ADVANCEMENT OF LEARNING * CORPORATE LIFE * PATRIOTISM *

(b) Drawee: The person who is ordered to pay or on whom the bill is drawn.

(c) Payee: The person who is to receive the payment.

5. The bill must be signed by the drawer otherwise it will become an inchoate instrument.

6. The order to pay must be of a certain sum and it must be in money only.

7. The payee and drawee must be certain.

8. It must be properly stamped under the Indian Stamp Act.

Cheque: A cheque is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand. It is like a bill of exchange always drawn on a bank payable on demand. Therefore, it must satisfy all the requirements of a bill **(section 6)**. It must be in writing and signed by the drawer. It should contain an unconditional order to a specified banker to pay a certain sum of money to a particular person or to his order or to the bearer on demand.

Features of a cheque

i. A cheque must be in writing and duly signed by the drawer.

ii. It contains an unconditional order. iii. It is issued on a specified banker only.

iv. The amount specified is always certain and must be clearly mentioned both in figures and words. v. The payee is always certain.

vi. It is always payable on demand. vii. The cheque must bear a date otherwise it is invalid and shall not be honoured by the bank.

Types of Cheques

1. **Bearer Cheque**– When the words "or bearer" are present on the cheque, the cheque is called a bearer cheque. The bearer cheque is payable to the person specified therein or to any other else who presents it to the bank for payment. However, such cheques are risky because if such cheques are lost, the finder of the cheque can collect payment from the bank.

2. **Order Cheque-** When the words "or order" appears on the cheque instead of the word "bearer", it is called an order cheque. Such a cheque is payable to the person known as the payee, or to somebody else to whom it is endorsed (transferred).

3. **Uncrossed / Open Cheque**– When a cheque is not crossed, it is known as an "Open Cheque" or an "Uncrossed Cheque". The payment of such a cheque can be obtained at the counter of the bank. An open cheque may be a bearer cheque or an order one.

* ADVANCEMENT OF LEARNING * CORPORATELIFE * PATRIOTISM *

4. **Crossed Cheque**– Crossing of cheque means drawing two parallel lines on the face of the cheque with or without additional words like "& CO." or "Account Payee" or "Not Negotiable". A crossed cheque cannot be encashed at the cash counter of a bank but it can only be credited to the payee's account.

5. **Anti-Dated Cheque**– If a cheque bears a date earlier than the date on which it is presented to the bank, it is called as "anti-dated cheque". Such a cheque is valid upto three months from the date of the cheque.

6. **Post-Dated Cheque**– If a cheque bears a future date for encashment, it is called a post-dated cheque. A post dated cheque cannot be honoured before the date on the cheque.

7. **Stale Cheque**– If a cheque is presented for payment after the expiry of its validity i.e. beyond 3 months from the date on which the cheque is issued it is called stale cheque. A stale cheque is dishonoured by the bank.

Distinction between Bill and Note

The below given differences are enumerated from the above meanings of both the instruments—

(1) In a note there are only two parties - the maker and the payee. In a bill there are three parties namely, drawer, drawee, and payee; though two out of three capacities may be filled by one and the same person. In a bill the drawer is the maker who orders the drawee to pay the bill to a person called the payee or to his order. When the drawee accepts the bill he is called the acceptor.

(2) A note cannot be made payable to the maker himself, while in a bill the drawer and payee or drawee and payee may be the same person.

(3) A note contains an unconditional promise by the maker to pay to the payee or his order; in a bill there is an unconditional order to the drawee to pay according to the drawer's directions.

(4) A note is presented for payment without any prior acceptance to the maker. A bill payable after sight must be accepted by the drawee or someone else on his behalf before it can be presented for payment.

(5) The liability of the maker of a note is primary and absolute, but the liability of the drawer of a bill is secondary and conditional. He will be liable only if the bill is not accepted or paid by the drawer.

(6) The maker of the note stands in immediate relation with the payee. while the maker or drawer of an accepted bill stands in immediate relation with the acceptor and not the payee.

(7) Foreign bills must be protested for dishonour when each protest is required to be made by the law of the country where they are drawn but no such protest is necessary in the case of the note.

(8) When a bill is dishonoured, due notice of dishonour is to be given by the holder to the drawer and the intermediate endorsers, but no such notice need be given in the

Distinction between Bills and Cheque

1. A cheque is always drawn on a banker, while a bill may be drawn on anyone, including a banker.

2. A cheque's payment is made when it has been demanded whereas in case of a bill its nature may be such that payment has to be made on demand or after the expiry of a certain period after date or sight.

* ADVANCEMENT OF LEARNING * CORPORATE LIFE * PATRIOTISM *

3. In case of a cheque a bearer can get payment on demand but a bill's payment cannot be demanded by the bearer.
4. Acceptance of bill is necessary for the demand of its payment, in case of cheque acceptance is not required and is aimed for quick payment.
5. In case of bills ordinarily a provision for grace days is made (which is generally of 3 days) whereas in case of cheques no such grace is allowed.
6. In the absence of presentment of a bill for payment the liability of bill's drawer ceases, whereas liability of cheque's drawer ceases when the delay caused in presentment for payment results in damages.
7. Notice must be served when the bill is dishonoured, but when a cheque is not honoured, no such notice is necessary.
8. A cheque being a revocable order the authority may be revoked by countermanding payment, and is determined by notice of the customer's death or insolvency. In case of a bill the position is different, it cannot be revoked.
9. A cheque may be crossed to secure its payment, no such crossing can be done in case of a bill.

Q. What are the relevant provisions of the Negotiable Instrument Act, regarding dishonor of cheque?

Section 138 of Negotiable Instruments Act, 1881

The Negotiable Instruments Act, 1881, provides for three instruments namely promissory notes, bills of exchange and cheques. The word 'negotiable' means transferable with respect to consideration and 'instrument' is a written document which creates a right in favour of a person. Thus negotiable instrument means a document (sum of money) transferable by delivery.

Section 138 of the Negotiable Instruments Act, 1881 provides for circumstances under which a case for dishonour of cheques is filed. It states that a cheque has to be presented to the bank within 6 months from the date on which it was drawn or within a period of its validity whichever is earlier. Also the following circumstances must be seen:-

1. The payee or holder, during validity of the cheque, makes a demand for payment of money specified in the cheque by giving a written notice within 30 days of the receipt of the information from the bank that the cheque was returned as unpaid to the drawer of the cheque.
2. The drawer of cheque failed to pay the said amount to the payee or holder, during validity of the cheque, within 15 days of receipt of notice.

Either or both civil and criminal complaints can be filed. In case of a criminal complaint, the drawer of the cheque will be punished with:-

1. Maximum imprisonment for 2 years;
2. Fine which may extend to twice the amount of the cheque; or
3. Both

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In case someone wants to go for civil proceeding, a money recovery suit has to be filed under Order 37 of Civil Procedure Code within 3 years of the date of cause of action. The drawer of the cheque will be ordered to pay the full amount of the cheque and the interest accrued from the date of suit to the date of decree. The choice is on the plaintiff. If a sufficiently large amount is involved it is advisable to file both.

GROUNDS FOR DISHONOUR OF CHEQUES

The following are the grounds under which cheques presented to the bank are dishonoured:-

1. **Insufficiency of funds**– This means that the amount written in the cheque is more than the actual amount in the bank account of the drawer. While writing a cheque, the drawer has to be sure that he has sufficient funds in his account otherwise the cheque presented to the bank would get dishonoured.

2. **Irregular Signature-** If the signature of the drawer in the cheque does not match the specimen signature available with the bank, the cheque will get dishonoured.

3. **Alterations-** According to RBI guidelines on Alterations/Corrections on the cheque effective from 1st December, 2010, no changes shall be allowed on the cheques except the mentioned date on the cheque. If any changes are to be made, a new cheque has to be issued. (See Here) Even if the alteration is signed for verification then also the cheque will be considered invalid and will get dishonoured by the bank.

4. **Post-dated Cheque**– It is a cheque in which a future date is mentioned for collection through an account. It has to be presented to the bank on the date mentioned on the cheque. If it is presented before that date then it will get dishonoured.

5. **Stale Cheque-** If the cheque is presented to the bank after the expiry of its validity i.e. after three months, the cheque gets dishonoured.

6. **Stop Payment instructions**– A 'Stop Payment' instruction is made to a bank to cancel a cheque or stop the process of payment. This order is made by the account holder and can be enacted if cheque or payment has not been processed. The cheque will get dishonoured in this case.

7. **Frozen Account-** It is an account from which the account holder cannot withdraw or transfer money due to a court order but he can check his transactions and also receive deposits. Therefore a cheque presented for collection through this account will get dishonoured by the bank.

Section 138 of Negotiable Instruments Act, 1881

The Act is silent in terms of territorial jurisdiction under Section 138. This issue needs to be examined from point of view of Criminal Procedure Code, 1973. Section 177 of the Criminal Procedure Code, 1973 provides that every offence shall be tried by that court within whose jurisdiction it was committed. In ***Harman Electronics (P) Ltd.* v. *National Panasonic India (P) Ltd.*** **[(2009) 1 SCC 720]** it was held that, offence under Section 138 of Negotiable Instruments, 1881 is governed by Section 177 of Criminal Procedure Code, 1973 with respect to territorial jurisdiction.

In 2016, Gujarat High Court in its judgment of ***Brijendra Enterprise* v. *State of Gujarat and Others (Criminal Misc. Application No. 13062 of 2011)*** explained the issue on territorial jurisdiction in case of dishonour of cheques with examples. It was held that when a cheque is delivered for collection of money through an account, the complaint

* ADVANCEMENT OF LEARNING * CORPORATE LIFE * PATRIOTISM *

should be filed in that court within whose jurisdiction the branch of the bank is located where the payee or holder maintains his account and secondly when the cheque is presented for payment over the counter, the complaint has to be filed before the court within whose jurisdiction the branch of the bank is located where the drawer maintains his account.

It was further held that:-

1. There should be inquiry and trial shall be done only in that court within whose jurisdiction the branch of the bank is located.

2. If there is any cheque bouncing case pending in any court before the inception of the proposed legislation then it should be transferred to a court which comes under the new system of jurisdiction.

3. If more than one case is filed by the same payee against the same drawer which is pending then all subsequent complaints have to be filed in the court which comes under the proposed legislation [Section 142(2)].

4. If a complaint filed in a court which has jurisdiction under the proposed legislation, all the upcoming complaints under Section 138 have to be filed in the same court notwithstanding of the fact that those cheques were presented within the jurisdiction of the court.

5. Explanation I of Section 6 was amended due to insufficiency as it draws a presumption of drawing of a physical cheque which resulted in addition of Explanation III for the purpose of reference to Information Technology Act, 2000.

Person Specific Offence

The Supreme Court in ***N. Harihara Krishnan*** **v.** ***J. Thomas (Crl. App. No. 1534 of 2017)*** held that offence under Section 138 is person specific. The general concept under Criminal Procedure Code, 1973 that cognizance was taken against the offence and the offender was not appropriate in prosecution under Negotiable Instruments Act, 1881. The first ingredient which constitutes the offence is the fact that a person drew a cheque. The identity of the drawer of the cheque should be known to the complainant (payee) to start the trial. Only then will there be a dispute if the person alleged to have drawn the cheque denies the very fact. The other facts that are required to be proved for punishing the alleged drawer of cheque that got dishonoured is that the payee followed each of the steps given under Section 138 before commencing the prosecution. Otherwise there will be no cause of action. Disclosure of name of drawer of the cheque is one of the most important allegations which should be mentioned in the complaint. Therefore for prosecution under Section 138 there must be cognizance of offence and not the person is inappropriate. There cannot be a prosecution without the accused.

Q. Define and explain with illustration: **(a) Holder**

The holder of a negotiable instrument means any person entitled to the possession of the instrument in his own name and to receive or recover the amount due there on from the parties liable thereto. Thus, in order to be called a 'holder' a person must satisfy the following two conditions : (Sec. 8).

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1. He must be entitled to the possession of the instrument in his own Name. Actual possession of the instrument is not essential. What is required is a right to possession under some legal or valid title. He should be a 'de jure holder' and not necessarily 'de facto holder'. It means that the person must be named in the instrument as the payee or the indorsee, or he must be the bearer thereof, if it is a bearer instrument. However, the heir of a deceased holder or any other person becoming entitled by operation of law is a holder although he is not the payee or indorsee or bearer thereof.

If a person is in possession of a negotiable instrument without having a right to possess the same he cannot be called the holder. Thus, a thief, or a finder on the road, or an indorsee under a forged endorsement, although may be having the possession of the instrument, cannot be called its holder because he does not acquire legal title thereto and hence is not entitled in his own to the possession thereof. Similarly, a beneficial owner claiming through a 'benamidar' in whose favour the instrument had been made or drawn is not a holder because he is not entitled to the possession in his own name and cannot by himself maintain an action on the instrument.

(2) He must be entitled to receive or recover the amount due there on from the parties liable thereto. In order to be called a holder, besides being entitled to the possession of the instrument in his own name, the person must also have the right to receive or recover the amount of the instrument and give a valid discharge to the payer. Thus, one may be the bearer or the payee or the indorsee of an instrument but he may not be called a holder if he is prohibited by a Court order from receiving the amount due on the instrument.

Where a person obtains possession of an instrument by theft, fraud or under a forged endorsement, he is not a holder and can not a holder and cannot claim payment from liable parties.

(b) Holder in due Course

The despotic but necessary principle relating to negotiable instruments is that a person taking a negotiable instrument in good faith and for value obtains a valid title though he takes from one who had none or who was merely a thief. The property in a negotiable instrument is acquired by anyone who takes it bona-fide and for value, notwithstanding any defect of title in the person from whom he took it. Now such a person who takes an instrument "in good faith and for value" becomes the true owner of the instrument and is known as a "holder in due course".

According to Section 9 "Holder in due course" means any person who for consideration became the possessor of a promissory note, bill of exchange or cheque if payable to bearer, or the payee or endorsee thereof, if payable to order, before the amount mentioned in it became payable and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

The essential qualifications of a "holder in due course" may be summed up as follows:

1. He must be a holder for valuable consideration. All the prerequisite of consideration should be met so as to result in a valuable consideration.
2. That he became the holder of the instrument before its maturity. Thus the person who takes a negotiable instrument after maturity does not become a holder in due course.
3. That the instrument should be complete and regular on the fact of it. Face here includes the back also.

* ADVANCEMENT OF LEARNING * CORPORATE LIFE * PATRIOTISM *

4. The last requirement is that the holder should have received the instrument in "good faith". There are two methods of ascertaining a person's good faith, "subjective" and objective". In subjective test the Court has to see the holder's own mind and the only question is "did he take the instrument honestly"? In objective test, on the other hand, we have to go beyond the holder's mind and see whether he exercised as much care in taking the security as a reasonably careful person ought to have done. Subjective test requires "honesty", objective "due care and caution". Good faith indicates a person takes the instrument without sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

Right of a holder in due course

1. Once a negotiable instrument passes through the hands of a holder in due course, it get cleansed of all defects, unless he himself was a party to fraud or illegality committed regarding the instrument (S. 53).

2. The maker of a note, or drawer of a bill or cheque, and no accepts of a bill for the honour of the drawer, will be permitted to deny the validity of the instrument, as originally drawn, in a suit thereon by a holder in due course.

3. In case of a suit by holder in due course, no maker of a note, or acceptor of a bill payable to order, will be permitted to deny the validity of the payee's capacity at the date of the note of a bill to endorse the same (S.121).

4. Upon a suit by a holder in due course the acceptor cannot take the defence or accommodation acceptance (S. 36).

5. The holder in due course gets a better title than that of the transferor of the instrument, even if the title of the transferor was defective, the holder in due course will get a good title. But in case of a forged instrument, even a holder in due course will get no title, as it is a case of total absence of title and not a mere defect of title (S. 58).

6. If a note or a bill is negotiated to a holder in due course the liable parties cannot avoid liability on the ground, that delivery of the instrument was conditional or for a special purpose (S. 46, 47).

7. When a bill is drawn payable to the drawer's order on a fictitious name, and is endorsed by the same hand as drawer's signature, the acceptor cannot take the plea that the payee was a fictitious person (S. 42).

8. Where a duly stamped and signed instrument is either left wholly blank or in complete in some material requirements such as date, amount, payee's name, and is delivered by one person to another for the purpose of filling it up. If such a person or any holder fills up more amount, than what he was authorized to do. The holder in due course of such an instrument can recover the whole amount, provided the stamp affixed upon it is sufficient to cover the filled sum (S.20).

* ADVANCEMENT OF LEARNING * CORPORATE LIFE * PATRIOTISM *